TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1137.

THE COUNTY OF MOULTRIE, PLAINTIFF IN ERROR,

vs.

GEORGE B. FAIRFIELD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 8, 1881.

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1 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said court before you, between George B. Fairfield, plaintiff, and The County of Moultrie, defendant, a manifest error hath happened, to the great damage of the said County of Moultrie, as by its complaint appears:

We, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth Monday of October (being the third
2 Monday of the term of said court) next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at Springfield, in said district, this 20th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth year.

[SEAL.]

J. A. JONES,
Clerk U. S. Circuit Court South'n District Ill's.

(Indorsed:) No. 6058. U. S. Supreme Court. George B. Fairfield vs. The County of Moultrie. Writ of error. Filed September 27th, 1881. J. A. Jones, clerk.

3 *Placita.*

Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the honorable Thomas Drummond, judge of the seventh judicial circuit and presiding judge of said court, pro tempore sole judge of said court, on Monday, the 19th day of September, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth year.

J. A. JONES, *Clerk.*

GEORGE B. FAIRFIELD
vs.
THE COUNTY OF MOULTRIE. } Assumpsit.

George B. Fairfield, a citizen of the State of New York, plaint-
4 iff in this suit, puts in his place Messrs. Scholes and Mather, his attorneys, against the County of Moultrie, a body politic and corporate, organized and existing under and by virtue of the laws of

the State of Illinois, defendant, of a plea of trespass on the case upon promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 18th day of December, in the year of our Lord one thousand eight hundred and eighty, came the plaintiff, by his attorneys, and filed in the office of the clerk of said court his bond for costs in said cause; which said bond is in the words and figures following, to wit:

Bond for costs.

Circuit court United States of America, southern district of Illinois, ss, January term, A. D, 1881.

GEORGE B. FAIRFIELD *vs.* THE COUNTY OF MOULTRIE. } In assumpsit. Damages, $10,000.

5 We do hereby enter ourselves security for costs in this cause and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 18th day of Dec., 1880.

SCHOLES AND MATHER.

(Indorsed:) Filed Dec. 18, A. D. 1880. J. A. Jones, clerk.

And afterward, to wit, on the same day and in the year last aforesaid, there was issued out of said clerk's office a summons in said cause, directed to the marshal of said district to execute; which said summons, together with the return of the marshal thereon, is in the words and figures following, to wit.

Summons.

Circuit court of the United States of America, southern district of Illinois, ss.

6 The United States of America to the marshal of the southern district of Illinois, greeting:

We command you to summon The County of Moultrie, if found in your district, to be and appear before our judge of circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield in the district aforesaid, on the first Monday of January next, to answer unto George B. Fairfield of a plea of trespass on the case upon promises, to his damage, as he alleges, of ten thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 18th day of December, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fifth year.

[L. S.] J. A. JONES, *Clerk.*

Marshal's return.

7 Executed this writ December 23d, 1880, by reading same and delivering a true copy thereof to W. W. Eden, county clerk of said county of Moultrie.

JACOB WHEELER, *U. S. M.*,
By C. P. DAVIS, *Deputy.*

(Indorsed:) Filed January 3, A. D. 1881. J. A. Jones, clerk.

And afterwards, to wit, on the 23d day of December, in the year of our Lord one thousand eight hundred and eighty, came the plaintiff, by his attorney, and filed in said clerk's office his narration in said cause; which said narration is in the words and figures following, to wit:

Narration.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In circuit court, January term, A. D. 1881.

In this action George B. Fairfield, a citizen of the State of New York, plaintiff, by Scholes and Mather, his attorneys, complains of The County of Moultrie, a body corporate and politic, organized
8 and existing under the laws of the State of Illinois, and a citizen of said southern district, in a plea of trespass on the case on promises.

For that whereas the said defendant on, to wit, the 17th day of December, in the year of our Lord one thousand eight hundred and eighty, at, to wit, said southern district, became and was indebted to the said plaintiff in the sum of ten thousand dollars of lawful money of the United States of America, for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendant, and at the special instance and request of the said defendant; and being so indebted to the said plaintiff the defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned, when the said defendant should be thereunto afterward requested.

And whereas also the said defendant afterwards, to wit, on the
9 same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the aforesaid goods, wares, and merchandise at the time of the sale and delivery thereof were reasonably worth, when the said defendant should be thereunto afterwards requested; and the said plaintiff aver' that the said goods, wares, and merchandise last mentioned at the time of the sale and delivery thereof were reasonably worth the further sum of ten thousand dollars, of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the

said defendant afterwards, to wit, on the same day and year, and at the same place aforesaid, had notice.

And whereas also the said defendant afterwards, to wit, on the
10 same day and year, and at the place aforesaid, was indebted to the said plaintiff in the further sum of ten thousand dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the like request of the said defendant. And for other money by the said plaintiff, before that time paid, laid out, and expended for the said defendant and at the like request of the defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiff. And being so indebted, the said defendant in consideration thereof afterwards, to wit, on the same day and year and at the place aforesaid, undertook, and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also the defendant afterwards, to wit, on the same day and year and at the place aforesaid, accounted together with the
11 said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found in arrear and indebted to the said plaintiff in the further sum of ten thousand dollars of like lawful money as aforesaid; and being so found in arrear and indebted to the plaintiff, the defendant in consideration thereof afterwards, to wit, on the same day and year and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said de-
12 fendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of ten thousand dollars. And therefore the said plaintiff bring' suit, &c.

By SCHOLES AND MATHER,
His Att'ys.

COPY OF ACCOUNT SUED ON.

The county of Moultrie to George B. Fairfield, Dr.

For goods, wares, and merchandise		$10,000
" money lent and advanced		$10,000
" " paid, laid out, and expended		$10,000
" " had and received		$10,000
" " due on account stated		$10,000

Defendant is notified that plaintiff will offer and rely upon in evidence coupons of bonds of said county issued in aid of the B. & O. River R. R. Co., and the D., S. & M. R. R. Co.

(Indorsed:) Filed December, 23, 1880. J. A. Jones, clerk.

And afterwards, to wit, on Monday, the 3d day of January, at the January term of said court, in the year of our Lord one thousand
13 eight hundred and eighty-one, the following proceedings were had in said court and entered of record in said cause, to wit:

Rule to plead.

GEORGE B. FAIRFIELD } 6058. Assumpsit.
v.
COUNTY OF MOULTRIE. }

On motion of plaintiff, by Messrs. Scholes and Mather, his attorneys, the defendant having been regularly served with process, is ruled to plead herein by Wednesday, the 5th day of January inst.

And afterwards, to wit, on Wednesday, the 5th day of January, at the term and in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

Extension of rule to plead.

GEORGE B. FAIRFIELD } 6058. Assumpsit.
vs.
COUNTY OF MOULTRIE. }

14 On motion of defendant, by Messrs. Eden and Clark, its attorneys, the rule to plead herein is extended to the 2nd day of February next.

And afterwards, to wit, on the 27th day of January, in the year last aforesaid, came the defendant, by its attorney, and filed in said clerk's office its plea in said cause; which said plea is in the words and figures following, to wit:

Plea.

UNITED STATES OF AMERICA:

In circuit court, for southern district of Illinois, January term, 1881.

THE COUNTY OF MOULTRIE, } In assumpsit.
ats.
GEORGE W. FAIRFIELD. }

Now comes the defendant The County of Moultrie, by Eden & Clark, its att'ys, and defends the wrongs, injury, when, &c., and says that it did not undertake and promise in manner and form as the plaintiff hath complained thereof against it, and of this it puts
15 itself upon the country, &c.

By EDEN AND CLARK,
Att'ys for Def't.

(Indorsed:) Filed January 27, 1881. J. A. Jones, clerk.

And afterwards, to wit, on Thursday, the 19th day of May, at the January term of said court, in the year last aforesaid, the following further proceedings were had in said court, and entered of record in said cause, to wit:

Order for hearing cause.

GEORGE B. FAIRFIELD
vs.
COUNTY OF MOULTRIE. } 6058. Assumpsit.

On motion of plaintiff, by Messrs. Scholes and Mather, his attorneys, this cause is set for hearing on the 26th day of May inst.

And afterwards, to wit, on Monday, the 19th day of September, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-one, the following further proceedings were had in said court, and entered of record in said cause, to wit:

16

Judgment for plaintiff.

GEORGE B. FAIRFIELD
vs.
COUNTY OF MOULTRIE. } 6058. Assumpsit.

This day comes as well the plaintiff by Messrs. Scholes and Mather, his attorneys, as the defendant by Messrs. Eden and Clark, its attorneys, and the issue joined by consent is tried by the court, a jury being waived, and the court having heard the evidence and argument of counsel, finds the issue for the plaintiff, and assesses his damages to the $17,474.83 sum of seventeen thousand four hundred and seventy-four dollars and eighty-three cents.

It it therefore ordered and adjudged by the court that the plaintiff recover of the defendant the said sum of seventeen thousand four hundred and seventy-four dollars and eighty-three cents, his damages aforesaid assessed, together with the sum of sixty-seven dollars and seven cents, his costs and charges by him about his suit in this behalf expended, and that execution issue therefor.

17

And thereupon, on the same day and in the year last aforesaid, came the defendant, by its attorneys, and filed in said clerk's office its bill of exceptions; which was signed, and is in the words and figures following, to wit:

Bill of exceptions.

In the U. S. circuit court, southern district of Illinois. June term, A. D. 1881.

GEORGE B. FAIRFIELD
vs.
THE COUNTY OF MOULTRIE. }

Be it remembered that, by agreement of the parties, special pleas were waived in the above-entitled cause, and the defendant was permitted, under the general issue, to offer evidence and make any defense that would be competent under any special plea well pleaded; and by a further agreement of the parties, in writing, a jury was waived and the cause submitted to the court without the intervention of a jury; and the cause coming on for trial before the court, the plaintiff, to maintain the issues on his part, offered in evidence in-

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terest coupons, detached from certain bonds, being part of a series of two hundred bonds, numbered from 1 to 200 inclusive, each for the sum of one thousand dollars, and all of like tenor and effect, except the numbers thereof, issued in aid of the Bloomington & Ohio River R. R. Co., on the 27th day of May, 1872, by order of the board of supervisors of said county of Moultrie, made & entered of record at its March term, A. D. 1870, and payable to said company, or bearers, payable ten years from the date thereof, or sooner, at the option of said county, and drawing interest at the rate of ten per cent. per annum, payable annually, said coupons, offered in evidence as aforesaid, being for accrued interest on the bonds from which they were detached; and said
19 coupons are all of like tenor and effect, except dates and numbers, *and dates*, and are in words and figures following, to wit:

Coupon off of bond issued in aid of B. & O. R. R. R. Co.

No. .] COUNTY OF MOULTRIE. [$100.

Interest warrant.

The county of Moultrie, State of Illinois, will pay to the bearer, on the day of , A. D. , one hundred dollars, at the Farmers' Loan and Trust Company, in the city of New York, being one year's interest on the bond numbered above.

J. A. FREELAND,
Chairman of Board of Supervisors.

A. N. SMYSER, *County Clerk.*

To the introduction of which said coupons in evidence the defendant, by its counsel, objected; which said objections were then and there overruled by the court; to which said ruling of the court in overruling said objections and in admitting said coupons in evidence the defendant, by its counsel, then and there excepted.

The plaintiff further introduced in evidence certain interest coupons, detached from certain bonds of a series numbered from 1 to 75 inclusive, each for the sum of one thousand dollars, issued by order of the board of supervisors of said county in aid of and to the Decatur,
20 Sullivan and Mattoon Railroad Company, or bearer, drawing interest at the rate of eight per cent. per annum, payable annually, bearing date November, A. D. 1871, and ten years after date, or sooner at the option of said county, and all of like tenor and effect except numbers, said coupons offered in evidence being for accrued interest on the bonds of corresponding number, and the same are in words and figures following, to wit:

(Coupon off of bond issued in aid of D. S. & M. R. R. Co.)

$80.] [$80.

The County of Moultrie, State of Illinois, will pay to the bearer the sum of eighty dollars at the office of the Farmers' Loan and Trust Co., in the city of New York, being the annual interest due the first day of Nov'r, A. D. 1879, on bond No. 4, for $1,000.

J. B. TITUS,
Chairman Board of Supervisors.

A. N. SMYSER, *Clerk.*

(On face in red ink :) 8.
(Endorsed on back :) Filed & judgment rendered.July 19, '81. J. A. Jones, clerk.

To the introduction of which said coupons in evidence the defendant, by its counsel, then and there objected, for the reason that said coupons are for the interest on certain bonds issued at the time and in the
21 manner aforesaid, as a donation to and in aid of the Decatur, Sullivan & Mattoon Railroad Company, after the adoption of the constitution of 1870, not being authorized under existing law by a vote of the people prior to the adoption of said constitution and by the terms of the separate clause of said constitution, entitled "municipal subscription to railroad and private corporations," said county was prohibited from making said donation, which said objections were then and there overruled by the court, to which said ruling of the court in overruling said objections and admitting in evidence said coupons the defendant, by its counsel, then and there excepted.

And the court, after hearing the evidence and the argument of counsel, specially finds, from the evidence, the facts upon which the judgment in said cause is rendered as follows:

That a charter was granted by the general assembly of the State of Illinois providing for the organization of the Bloomington & Ohio River Railroad Company, approved March 10th, 1869; and that in and by the 8th section thereof it is provided that "the several counties, cities, villages, incorporated towns, and the several townships
22 in counties having township organization through or near which the said road shall be located, are hereby authorized to raise money, by a tax to be levied upon all the real and personal property in the said several counties, cities, villages, incorporated towns, and townships, and to subscribe the same to the capital stock of said corporation hereby created, for the purpose of aiding in the construction and completion of said road, and the said several counties, cities, villages, incorporated towns, and townships, as aforesaid, are further authorized to issue bonds, drawing interest at the rate of ten per cent. per annum, which said bonds shall be negotiable and payable in the city of New York in not less than one nor more than ten years after the date of the same: Provided, That no subscription shall be made or no tax shall be levied until the same shall be voted for as hereinafter provided."

And in and by the 9th section thereof it is further provided that "Whenever twenty-five voters of any such county, city, village, town, or township shall make a written application to the county clerk of such county, or twenty-five voters of any such city, incorporated
23 village, or town, or township shall make such application to the clerk thereof, requiring an election by the legal voters of such county, city, village, or town, or township to determine whether such subscription shall be made and such tax levied, specifying in such application the amount such clerk shall file such application in his office, and immediately give the notice as required by law for an election to be held by the legal voters of such county, city, village, or town, or township at the usual places for holding elections, such notice to be given at least thirty days prior to the day of holding such election, and such election shall be held and conducted in all respects, and returns thereof made, as in case of annual elections."

And by the 10th section thereof it is further provided that—

"If the majority of voters voting at such election shall be in favor of such subscription and tax for the payment thereof, then such county,

city, incorporated village, or town, or township, by its proper corporate authority, shall levy such tax, and subscribe to such corporation
24 the amount thereof, to be determined or voted for at any such election, and shall issue to said corporation their bonds for such amount drawing ten per cent. interest per annum and payable in not less than one nor more than ten years. The said bonds when issued are to be irrevocable, and negotiable and payable as in section 8 as aforesaid."

And in and by the 11th section thereof it is further provided that—

"If any county, city, village, or town, or township shall subscribe to said capital stock under the provisions of this act, and shall issue their bonds, said bonds shall be full payment of their said subscription; and the supervisors of said township, or county court of such county, and the corporate authorities of such city, village, or town, shall annually appoint some suitable person to represent and vote upon the stock so subscribed and levied as aforesaid."

And in and by the 19th section of said act it is further provided that—

"The several counties, cities, villages, incorporated towns, and
25 the several towns or townships in counties having township organization, through or near which said road shall be located, are hereby empowered to make donations and to issue bonds for the same in the manner hereinbefore provided to said railroad for the construction and completion of the same," which said several sections contain all the law authorizing municipal corporations to subscribe for the stock or make donations in aid of said railroad company.

And the court further specially finds that on the 28th day of September, A. D. 1869, a petition signed by twenty-five legal voters of said county was filed with the county clerk thereof, praying that an election be held at the usual place of holding elections in said county, on the 2d day of November, A. D. 1869, to determine whether or not said county would donate to said Bloomington and Ohio River Railroad Company the sum of two hundred thousand dollars upon certain conditions, and that said clerk did, in pursuance of said petition, issue and cause to be published notices of said election, and that the conditions prescribed in said petition, and incorporated in said notices of election, upon which said donation should be paid by said
26 Moultrie County to said railroad company was in words and figures following, that is to say, "and said donation to be paid by said county upon the following express conditions namely; no portion of said donation shall be paid to said company, nor any bonds delivered to said company, its agents or assigns, until said company shall build and equip said railway through said county of Moultrie and run its trains thereon; and when said road is built and equipped, and the cars running thereon through said county of Moultrie, the said donation shall become due and payable, said donation shall be made by said county by issuing its bonds for the sum of two hundred thousand dollars, payable ten years from the date thereof or sooner, at the option of said county, and to be issued in such denominations as said company shall designate, and to be on interest from date at the rate of ten per cent. per annum, payable annually; and no bond shall be issued by said county only on the express conditions that they shall be received by said company for and in lieu of those voted by said county on the 18th day September, A. D. 1869, and on condition that said com-
27 pany shall forever release said county from any and all obligations on account of the vote taken by said county on the 18th day of September, A. D. 1869."

And the court further specially finds that on said 2d day of November, A. D. 1869, an election was held in said county of Moultrie, in pursuance of said petition for and notices of election, and that the form of the ballots voted at said election by the legal voters of said county was: "For donating two hundred thousand dollars to the Bloomington & Ohio River Railroad Company," by those voting for said proposition; and "against donating two hundred thousand dollars to the Bloomington & Ohio Railroad Company," by those voting against said proposition, and that the returns of said election were made in accordance with the forms of said ballots and were duly canvassed by the proper canvassing officers of said county, who certified, as the result of their canvass, that "for donating two hundred thousand dollars as aforesaid received one thousand and thirty-one votes; against donating two hundred thousand dollars as aforesaid received one hundred and ten votes;" and said canvassing officers made return
28 thereof according to law, and said returns were then and there placed upon the records of said county; and at said election no proposition to levy a tax to pay the principal or interest upon the sum to be donated as aforesaid was submitted to the voters of said county.

And the court further specially finds that the board of supervisors of said county, at their March term, A. D. 1870, made an order, and the same was duly entered upon their records, that there be donated by said county of Moultrie to the Bloomington & Ohio River Railroad Company the sum of two hundred thousand dollars upon the terms and conditions set forth in the petition for and notices of election hereinbefore set forth, and that when said company shall have completed their railroad through the said county of Moultrie, in accordance with their charter, and put the same in good running order and caused trains of cars to be running over and upon said railroad by the motive power of steam, there be issued and delivered to said railroad company bonds of the county of Moultrie in such denominations as said railroad company may require, due and payable ten years after the date
29 thereof, with interest thereon, payable annually at the rate of ten per cent. per annum, to the amount of two hundred thousand dollars, and that the same be countersigned by the clerk of the county court of said county.

And the court further specially finds that in the month of June, A. D. 1871, work was commenced by the Bloomington & Ohio River Railroad Company upon its road within the limits of the county of Moultrie, and that prior to that time no work had been done thereon in said county; and that on the 20th day of May, A. D. 1872, said railroad was completed through said county, and trains of cars of the Bloomington and Ohio River Railroad Company were running thereon through said county.

And the court further specially finds that on the 27th day of May, A. D. 1872, the chairman of the board of supervisors of said county and the county clerk, by order of the board of supervisors, issued and delivered to the Bloomington and Ohio River Railroad Company two hundred bonds, each for one thousand dollars, and all of like tenor and effect except the numbers thereof, numbered from one to two hun-
30 dred inclusive, and each with ten interest coupons thereto attached, the same being all of like tenor and effect except the dates and numbers thereof; and said bonds are in words and figures following, to wit:

Bond issued in aid of B. & O. R. R. R. Co.

UNITED STATES OF AMERICA,
State of Illinois, County of Moultrie:

The county of Moultrie, in the State of Illinois, acknowledges itself indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum the said county of Moultrie promises to pay to the Bloomington and Ohio River Railroad Company, or to the bearer hereof, at the office of the Farmers' Loan & Trust Company, in the city of New York, ten years from the first day of July, A. D. 1872, or sooner, at the option of said county of Moultrie, with interest from the first day of June, A. D. 1872, at the rate of ten per cent. per annum, payable annually at the office of said Farmers' Loan & Trust Company upon the presentation and delivery of the several coupons hereto annexed, as they respectively become due, and to the payment of which said principal and interest in the manner aforesaid the faith and revenues of said county are irrevocably pledged. This bond is one
31 of a series issued in aid of the construction of the Bloomington and Ohio River Railroad, amounting to two hundred thousand dollars, and consisting of two hundred bonds, numbered from 1 to 200 inclusive, each of which is for one thousand dollars, and all of which are of like tenor and date, and are issued by said county of Moultrie by virtue of a vote of a majority of voters of said county of Moultrie, voting at an election held in said county of Moultrie on the second day of November, 1869, which election was authorized by and was conducted according to the provisions of an act of the general assembly of the State of Illinois, approved March 10th, 1869, entitled an act to incorporate the Bloomington and Ohio River Railroad Company.

In witness whereof the chairman of the board of supervisors and county clerk of said county have hereunto set their hands and seals this 27th day of May, A. D. 1872.

JOHN A. FREELAND,
Chairman Board of Supervisors.

ALFRED N. SMYSER,
County Clerk.

And said interest coupons are in words and figures following, to wit:

$100.] COUNTY OF MOULTRIE. [No. .

Interest warrant.

The county of Moultrie, State of Illinois, will pay to the bearer,
32 on the first day of July, A. D. , one hundred dollars, at the Farmers' Loan and Trust Company, in the city of New York, being one year's interest on the bond numbered above.

J. A. FREELAND,
Chairman of Board Supervisors.

A. N. SMYSER, *County Clerk.*

And the court further specially finds that the bonds of that series, to which the coupons annexed were offered in evidence in this case, were afterwards, for a reasonable consideration, purchased by the plaintiff before their maturity, said plaintiff having no notice of any defense to the same.

The court further specially finds from the evidence that at the time of the issuing of said bonds the indebtedness of said county, including said bonds, was two hundred and seventy-five thousand dollars, and the valuation of the taxable property of said county was two million two hundred and seventy-nine thousand and eighty-four dollars, and that the sum of ten thousand dollars per annum was required to defray the necessary ordinary expenses of said county; and that at the time of the rendition of the judgment in this cause the indebtedness of the
33 county, including accrued interest, was three hundred and seventy-five thousand dollars, and the valuation of the taxable property therein was three million five hundred and eighty-nine thousand two hundred and fifty-one dollars, and that it required twelve thousand dollars per annum to defray the necessary ordinary expenses of said county.

And the court further specially finds that in and by the second section of an act entitled "An act to incorporate the Decatur, Sullivan and Mattoon Railroad Company," it is provided that—

2. The said company shall have full power and authority to locate, construct, complete, maintain, and operate a railroad, with one or more tracks, from the city of Decatur, Macon County, Illinois, to the town of Sullivan, in the county of Moultrie; thence to the city of Mattoon, in the county of Coles, or to any other point south or east from the said town of Sullivan, in the State aforesaid; and the board of directors of said company shall have power to establish such tariff of rates for the transportation of persons and property upon said railroad as they from time to time may determine, and to levy and collect the same for
34 the use of said company.

And in and by the ninth section thereof it is further provided:

9. The several incorporated towns, cities, counties, and towns organized under the township organization law along or near the route of said road, or that are in any way interested therein may, in their corporate capacities, subscribe to the stock of said company or make donations thereto, to aid in constructing or equipping said railroad, provided that whenever twenty-five legal voters of any such incorporated town, city, county, or township shall present to the clerk thereof a written application requesting that an election shall be held to determine whether such incorporated town, city, county, or township shall subscribe to the capital stock of said company or make a donation thereto, to aid in constructing or equipping said railroad, stating the amount and whether subscribed or donated, and the rate of interest and times of payment of the bond to be issued in payment thereof, such clerk shall receive and file such application, and shall forthwith proceed to post written or printed notices of an election to be held by the legal voters of such incorporated town, city,
35 county, or township, which notice shall be posted in four of the most public places of such incorporated town, city, county, or township for thirty days preceding an election, and said notices shall state fully the objects of such election, and said election shall be held and conducted, and returns thereof made as provided by law in this State and the charter of any such incorporated town or city, and additional returns thereof to one or more of the corporators under this act, or of the directors chosen in pursuance hereof. Each elector shall vote at such election for subscription or donation, as the case may be; and if a majority of the voters at such election shall be in favor of such subscription or donation, then the corporate authorities of such incorporated town, city, county, or town supervisor of such township,

shall subscribe to the stock of such company or donate thereto, as shall be determined at such election, the amount so voted at such election, and shall issue the bonds of such incorporated town, city, county, or township to said railroad company in such denominations as said company may require; the time of maturing of said bonds and the rate of interest not exceeding ten per cent. per annum, to be in ac-
36 cordance with the notice calling such election; and in all cases of the issue of bonds under this act, the same shall be countersigned by the clerk of such incorporated town, city, county, or township. The word township in this act shall be understood to describe towns organized under the township organization laws of this State. Any incorporated town, city, county, or township subscribing stock or donating to said railroad as aforesaid shall, by its proper authorities, annually thereafter levy and collect a sufficient tax on its assessed property to pay the interest on its bonds so issued as aforesaid.

And in and by section ten it is further provided:

10. The board of supervisors of Moultrie County are hereby authorized to subscribe to the capital stock of said company to an amount not exceeding eighty thousand dollars, and to issue the bonds of the county therefor, bearing interest at a rate not exceeding ten per cent. per annum; said bonds to be issued in such denominations and to mature at such time as said board of supervisors may determine, provided that the same shall not be issued until the said road shall be
37 opened for traffic between the city of Decatur and the town of Sullivan aforesaid.

And the court further specially finds, that at the December special term, 1869, an order was made by the board of supervisors of said county in words and figures following:

And it is further ordered by the said board of supervisors of Moultre County, that under and by virtue of the authority conferred upon said board by an act approved March 26th, 1869, entitled "An act to incorporate the Decatur, Sullivan and Mattoon Railroad Company, the county of Moultrie subscribed to the capital stock of the Decatur, Sullivan and Mattoon Railroad Company the sum of eighty thousand dollars to aid in the construction of a railroad by said company in pursuance of their charter.

And be it further ordered by the board of supervisors aforesaid, that when said railroad shall be open for traffic between the city of Decatur and the town of Sullivan aforesaid, there be issued eighty thousand dollars of the bonds of said county in denominations of not less
38 than five hundred dollars, payable to said company, drawing interest, to be paid annually at the rate of eight per cent. per annum, the principal to be due and payable ten years after date or sooner at the option of the county, and that said bonds be delivered to said railroad company in full payment of the subscription of said county so made as aforesaid.

And it is further ordered, that the chairman of the board of supervisors of said county shall issue and deliver to said railroad company the bonds aforesaid whenever said railroad company shall have completed and equipped their said line of railway through the said county of Moultrie.

And that under and by virtue of the tenth section of said act to incorporate the Decatur, Sullivan and Mattoon Railroad Company, and in pursuance of said order, the said county of Moultrie did then and there subscribe said sum of eighty thousand dollars to said railroad company, and did then and there become liable to pay said subscrip-

tion and to issue the bonds of said county therefor, as therein
39 provided, in payment of such subscription, upon the compliance by said company with the condition therein named: and that afterwards, to wit, on the 31st day of December, A. D. 1872, the said county of Moultrie being satisfied that the conditions named in said order had been complied with by said railroad company, did issue and deliver to the Chicago and Illinois Southern Railway Company, the successor by consolidation of the said Decatur, Sullivan and Mattoon Railroad Company, bonds to the amount of eighty thousand dollars upon the terms and conditions prescribed in said order.

And the court further specially finds that the board of supervisors of the county of Moultrie, on the 16th day of December, A. D. 1869, made an order in the words and figures following:

Order of board of supervisors.

December special term, A. D. 1869.

The board of supervisors of Moultrie County, Illinois, met pursuant to adjournment, at the court-house in Sullivan, in said county of Moultrie, on Tuesday, December 14th, 1869, at 1 o'clock p. m.

Present, J. Meeker, of Sullivan, chairman.
" Alex. Porter, of Lovington.
" Wm. Armintrout, of Whitney.
40 " J. D. Taylor, of East Helson.
" M. H. Warren, of Jonathan Creek.
" C. A. Reeves, of Lowe.
" W. P. McGuire, of Marrowbone.
" Jesse Wright, of Dora.

A. N. Smyser, clerk.
S. W. Wright, sheriff.

And afterwards, to wit, on the 16th day of December, 1869, the same being the third day of said term, and there being present the same as on the first day, the following among other proceedings were had and entered of record as follows, to wit:

The following orders pledging the county to subscriptions and donations for railroad purposes were then presented by W. P. McGuire, adopted and ordered to be spread upon the records, and are as follows, viz:

Whereas, on the 17th day of August, A. D. 1869, over twenty-five legal voters of the county of Moultrie did present to the clerk of the county court of said county a written application requesting that an election should be held in said county in pursuance of an act en-
41 titled "An act to incorporate the Decatur, Sullivan and Mattoon Railroad Company," to determine whether said county of Moultrie should make a donation of seventy-five thousand dollars to said Decatur, Sullivan and Mattoon Railroad Company to aid in the construction of a railroad to be built by said company in pursuance of their said charter, such donation to be paid in the bonds of said county of Moultrie, the same to be delivered to said company when said railroad should be completed and in good running order through said county of Moultrie, and the cars running thereon, said bonds to be due in ten years from the issue and delivery thereof, as aforesaid, to said company or its duly authorized agents; and to draw interest to be paid annually at the rate of eight (8) per cent. per annum. And whereas afterwards, to wit, on the 17th day of August, A. D. 1869, the clerk of the county

court of said county of Moultrie, in obedience to said application and in pursuance of said act of incorporation, did receive and file said
42 application and forthwith proceed to post printed notices of an election to be held by the legal voters of said county of Moultrie at the usual places of holding elections in said county at four of the most public places in each town or election district of said county, said election to be held on the 2nd day of November, A. D. 1869, which said notices were posted as aforesaid more than thirty days preceding said election, and stated fully the objects of said election as set forth in said written application for the holding thereof. And whereas on said second day of November, A. D. 1869, an election was held in said county of Moultrie in pursuance of said written application and notices and the act aforesaid, and the same was conducted and returns made thereof as provided by law; and whereas a majority of the votes cast at such election was in favor of donating said sum of seventy-five thousand dollars to the Decatur, Sullivan and Mattoon Railroad Company, for the purposes aforesaid, and upon the terms and conditions aforesaid: Therefore, it is ordered by the board of supervisors of Moultrie County that in order to carry out the wishes of the people, expressed by said vote, there be donated by said county of Moultrie to the Deca-
43 tur, Sullivan and Mattoon Railroad Company the sum of seventy-five thousand dollars upon the terms and conditions set forth in the application for said election. And it is further ordered, that when said company shall have completed their said railroad through the said county of Moultrie in accordance with their said charter, and put the same in good running order, and caused the trains of cars to be actually running over and upon said railroad, by the motive power of steam, there be issued and delivered to said railroad company bonds of the county of Moultrie in such denominations as said company may require, due and payable ten years after the date thereof, with interest thereon payable annually at the rate of eight per cent. per annum to the amount of seventy-five thousand dollars, and that the same be countersigned by the clerk of the county court of said county.

And the court further specially finds that afterwards, to wit, on the first day of November, A. D. 1871, the chairman of the board of supervisors of said county of Moultrie, and the clerk of the county court of said county, did issue and deliver to said Decatur, Sullivan
44 and Mattoon Railroad Company seventy-five bonds, numbered from one to seventy-five inclusive, all of which are of like tenor and effect, and to each of which said bonds there were attaced ten interest coupons for eighty dollars each, falling due in one, two, three, four, five, six, seven, eight, nine, and ten years, and that said bonds are each in words and figures following, except the difference in the numbers:

Bond issued in aid of D., S. & M. R. R. Co.

No. 36.] COUNTY MOULTRIE, ILLINOIS. [$1,000

8 p'r cent. bond.

The county of Moultrie, in the State of Illinois, acknowledges itself indebted in the sum of one thousand dollars lawful money of the United States of America, which sum the said county of Moultrie promises to pay to the Decatur, Sullivan and Mattoon Railroad, or to the *the* bearer hereof, at the office of the Farmers' Loan and Trust Company, in the

city of New York, ten years from the first day of November, A. D. 1871, at the rate of eight per cent. per annum, payable annually, at the office of said Farmers' Loan and Trust Company, upon the presentation and delivery of the several coupons hereunto annexed as they
45 respectively become due, and to the payment of said principal and interest in the manner aforesaid the faith and revenue of said county are irrevocably pledged.

This bond is one of a series issued in aid of the construction of the Decatur, Sullivan and Mattoon Railroad amounting to seventy-five thousand dollars, and consisting of seventy-five bonds, numbered from 1 to 75 inclusive, each for the sum of one thousand dollars, and all of which are of like tenor and date, and are issued by said county of Moultrie by virtue of a vote of a majority of the legal voters of said county voting at an election held in said county of Moultrie on the 2d day of November, A. D. 1869, which election was authorized by and conditioned according to the provisions of an act of the general assembly of the State of Illinois, approved March 26th, A. D. 1869, entitled "An act to incorporate the Decatur, Sullivan and Mattoon Railroad Company."

In witness whereof the chairman of the board of supervisors and the county clerk of said Moultrie County have hereunto set their hands and the seal of said county this first day of November, A. D. 1871.

J. B. TITUS,
Chairman of Board of Supervisors.

[SEAL.] A. N. SMYSER, *County Clerk.*

46 Registered by State auditor, Dec. 4th, 1871.

And that each of said coupons are in words and figures following, except the dates at maturity thereof:

$80.] [$80.

The county of Moultrie, State of Illinois, will pay to the bearer the sum of eighty dollars at the office of the Farmers' Loan and Trust Co., in the city of New York, being the annual interest due the first day of Nov'r, A. D. 1877, on bond No. 2, for $1,000.

J. B. TITUS,
Chairman Board of Supervisors.

A. H. SMYSER, *Clerk.*

And the court further specially finds that said bonds, with the coupons attached, were delivered to said railroad company as a donation, and were intended to be in satisfaction of the order last herein described made by the board of supervisors as aforesaid, on the 16th day of December, A. D. 1869.

And the court further specially finds, that afterwards, to wit, on the 1st day of November, A. D. 1876, the plaintiff became the pur-
47 chaser and bearer of a portion of said last-mentioned bonds and coupons for value before maturity, without notice of any defense thereto, being the same bonds and coupons described in his declaration and offered in evidence in this cause.

And the court further specially finds, that on the 22nd day of February, A. D. 1861, by virtue of an act of the general assembly of the State of Illinois entitled "An act to incorporate the Mattoon and Decatur Railroad Company," passed and approved on said day, there was authorized to be organized a certain incorporation by the name and style of "The Mattoon and Decatur Railroad Company," with full power

and authority to survey, locate, construct, and complete a railroad from Mattoon, in Coles County, in the State of Illinois, and thence through or near the town of Sullivan, in the county of Moultrie, to Decatur, in Macon County aforesaid, and which said act of incorporation from the said 22d day of February, 1861, has remained in full force and effect, and still so remains in force.

And the court further specially finds, that no petition for an
48 election making a donation of seventy-five thousand dollars by said county to the Decatur, Sullivan and Mattoon Railroad Company was ever filed with the clerk of said county requesting that an election be held in said county in pursuance of an act entitled "An act to incorporate the Decatur, Sullivan and Mattoon Railroad Company," nor were notices of such election ever given by said clerk, as is recited in the said order of the board of supervisors of said county on the 16th day of December, A. D. 1869, but the court finds the fact to be, that the petition for and notices of the election under which the election was held on the 2d day of Nov., 1869, authorizing the making of a donation and the issuing of bonds by said county of Moultrie, was in words and figures following, that is to say:

Petition for an election.

Petition to the county clerk of Moultrie County.

The undersigned, legal voters of the county of Moultrie and State of Illinois, respectfully petition you to order an election in said county, upon the question of said county donating seventy-five thousand dollars additional to the Mattoon, Sullivan and Decatur Railroad
49 Company, for the purpose of constructing said railway in accordance with the provisions of the charter of said company, said election to be held on the 2d day of November, A. D. 1869, and said donation to be paid by said county upon the following conditions, nameiy, said road to commence at or near the city of Mattoon in the county of Coles, State of Illinois, thence to run on the most practicable route to the towns of Sullivan and Bethany, in the county of Moultrie and State of Illinois; thence to the city of Decatur, in the county of Macon in said State, and no portion of said donation shall be paid to said company, its agents, or assigns until said company shall build and equip said railway through said county and run its trains thereon upon the above-described line, when said road is built and equipped and the cars running thereon through said county, the said donations shall become due and payable; said donation shall be made by said county by its issuing its bonds for the said sum of seventy-five thousand dollars payable ten years from the date thereof or sooner, at the option of said county,
50 and to be issued in such denominations as said county may designate, and to bear interest from date at the rate of eight per cent. per annum, payable annually, and no bonds shall be issued by said county only on the express conditions that they shall be received by said company for and in lieu of those voted by said county on the 18th day of September, A. D. 1869, and on condition that said company shall, forever release said county from any and all obligations on account of the vote taken by said county on the 18th day of September, A. D. 1869.

Names. Names.

Notice of election.

ELECTION NOTICE.

Whereas a petition has been presented to the undersigned, and filed in his office, signed by twenty-five legal voters of the county of Moultrie, in the State of Illinois, in the words and figures following:

Petition to the county clerk of Moultrie County, Illinois.

The undersigned, legal voters of the county of Moultrie and
51 State of Illinois, respectfully petition you to order an election in the said county upon the question of said county donating seventy-five thousand dollars additional to the Mattoon, Sullivan and Decatur Railroad Company for the purpose of constructing said railway in accordance with the provisions of the charter of the said company, said election to be held upon the 2d day of November, A. D. 1869, and said donation to be paid by said county upon the following express conditions, namely: Said road to commence at or near the city of Mattoon in the county of Coles and State of Illinois; thence to run on the most practicable route to the towns of Sullivan and Bethany in the county of Moultrie and State of Illinois; thence to the city of Decatur in the county of Macon in said State. And no portion of said donation shall be paid to said company, its agents, or assigns, until said company shall build and equip said railway through said county and run its trains thereon; and when said road is built and equipped, and the cars running thereon through said county, the said donation shall be-
52 come due and payable. Said donation shall be made by said county by issuing its bonds for the sum of seventy-five thousand dollars, payable ten years from the date thereof, or sooner, at the option of said county, and to be issued in such denominations as said county may designate, and to be on interest from date at the rate of eight per cent. per annum, payable annually; and no bonds shall be issued by said county only on the express condition that they shall be received by said company for and in lieu of those voted by said county on the 18th day of September, A. D. 1869; and on condition that said company shall forever release said county from any and all obligations on account of the vote taken by said county on the 18th day of September, A. D. 1869.

Now, therefore, notice is hereby given that on Tuesday, November 2nd, 1869, at the usual place of voting in the town of Marrowbowne, in the said county of Moultrie, an election will be held for donating or against donating seventy-five thousand dollars by the said county
53 of Moultrie to the Mattoon, Sullivan and Decatur Railroad Company upon the condition set forth in such petition; which election will be opened at eight o'clock in the morning and will continue open until six o'clock in the afternoon of said day.

Given under my hand and official seal this 28th day of September, A. D. 1869.

[L. S.] JOSEPH B. TITUS,
County Clerk.

And the court further specially finds that no election was held in said county of Moultrie on the 2d day of November, A. D. 1869, in

pursuance of a written application for and notices of an election to be held on said day in pursuance of an act entitled "An act to incorporate the Decatur, Sullivan and Mattoon Railroad Company," to determine whether said county of Moultrie should make a donation to the Decatur, Sullivan and Mattoon Railroad Company to aid in the construction of a railroad by said company, as is recited in the said order of the board of supervisors, made as aforesaid, on the 16th day of De-
54 cember, A. D. 1869, but the court finds the facts to be, that on the 2d day of November, A. D. 1869, that being the day of the general election in said county for the election of county officers, the voters of said county, voting at said election, did vote by ballot for and against said county donating seventy-five thousand dollars additional to the Mattoon, Sullivan and Decatur Railroad Company pursuant to the petition and notices hereinbefore set forth at large, and that the ballots so voted were "for or against the county of Moultrie donating seventy-five thousand dollars additional to the Mattoon, Sullivan and Decatur Railroad Company," and that a majority of the votes cast at said election was in favor of Moultrie County making said additional donation, and that an abstract of the votes given at said election was made by two justices of the peace in said county on the third day of November, A. D. 1869, and was filed in the office of the county clerk of said county on the 4th day of November, A. D. 1869, and the same is in words and figures following:

Abstract of votes cast.

Abstract of votes given in the county of Moultrie and State of
55 Illinois at an election held in said county on Tuesday, the second day of November, one thousand eight hundred and sixty-nine.

Names of persons voted for.	Number of votes given.
For donating seventy-five thousand dollars additional to the Decatur & Mattoon Railroad Company.	Rec'd nine hundred & eighty-three votes.
Against donating seventy thousand dollars additional to the Decatur and Mattoon Railroad Company.	Rec'd one hundred and fifty-six votes.

Poll-books opened and abstract made in our presence at the clerk's office at Sullivan, this third day of November, A. D. 1869.

WILLIAM WININGS, *J. P.*
JACOB N. SAGER, *J. P.*

And the court further specially finds that in the month of April, A. D. 1871, the Decatur, Sullivan and Mattoon Railroad Company commenced the construction of a railroad through said county of
56 Moultrie under the provisions of the charter of said company, and that no work was done thereon prior to said month of April, A. D. 1871, and that said railroad was completed through said county of Moultrie, and the trains of cars of said Decatur, Sullivan and Mattoon Railroad Company were running on said railroad on the 20th day of October, A. D. 1871.

And the court further specially finds that in the month of April, 1870, said Decatur, Sullivan, & Mattoon R. R. Co., entered into the following contract for the building of said road, and that the seventy-five

thousand issue of bonds, the coupons of which are sued on in this suit, formed part of the $155,000 of bonds mentioned in said contract, to wit:

Contract between R. R. Co. and P. C. Brinck & others.

This agreement, made this fifteenth day of April, 1870, between the Decatur, Sullivan, and Mattoon Railroad Company, of the State of Illinois, the first part, and P. C. Brink, of Philadelphia, and J. Edwin Conant, of the city of New York, of the second part, and their associates, assigne's, administrators, and executors, witnesseth, that
57 the said party of the second part hereby agrees and contracts to construct, complete, and equip for the party of the first part a railroad, which, when completed and equipped, shall be owned and operated by the said party of the second part, from a point in the city of Mattoon, in the county of Coles, where the Chicago and Illinois Southern Railroad crosses and intersects the track of the Indianapolis and St. Louis Railroad in or near said city of Mattoon, and thence to the town of Sullivan, in the county of Moultrie and State of Illinois; thence to the village of Bethany, in said county of Moultrie, and thence to the city of Decatur, Wheatland, or South Macon, in the county of Macon and State of Illinois, provided the sum of $100,000 shall be donated or subscribed as stock to said company, by counties, towns, or cities, in which case Decatur shall be made a point, together with all necessary side-tracks, station-houses, water-tanks, and turn-tables, so as to make a first-class railroad in all respects, for and in consideration of the
58 sum of $325,000 in bonds, at the times and in the manner as hereinafter mentioned, to be paid and delivered to said party of the second part by the said party of the first part, in bonds of the cities, towns, and counties along said line, in the manner as hereinafter provided to be paid, payable at such times and places, and bearing such rates of interest as has been or may be provided by the corporate authorities of such cities, towns, and counties, in their respective orders, directing the issue of such bonds and conditions upon which such sums were severally voted, and which said orders are made a part of this agreement. And it is expressly understood that no bonds are to be paid and delivered to the party of the second part until they shall have complied with all of said orders and requirements of said cities, towns, and counties in relation to said bonds, and to the issue of the same, and no bond shall be paid or delivered to said party of the second part until they have completed and equipped so much of said road for which they
59 may demand bonds; also in further consideration, in payment to said party of the second part shall receive the capital stock of said company, and such amounts of first-mortgage bonds to be issued per mile as the party of the second part shall deem necessary. There shall be sufficient and suitable culverts and crossings at all public roads and water-ways. It is further agreed that said party of the second part shall commence the work on said road and furnish all the materials, rails to be T pattern, not less than 45 lbs. per lineal yard, fish-plate fastenings, necessary as herein provided for, and fully construct and complete and equip said railroad ready for use to the corporate limits of the town of Sullivan aforesaid from the city of Mattoon within 14 months from the first day of June, 1870, and to the village of Bethany, in said county of Moultrie, in 16 months from the said first day of June, and thence to the city of Decatur, in the county of Macon and State of Illinois, on or before the 31st day of De-

60 cember, 1871, in case the said county of Macon or the towns upon the line or the city of Decatur shall, within 4 months from the date hereof, subscribe stock and make donations to the capital stock of said company the sum of one hundred thousand dollars in eight per cent. bonds, payable upon the completion of said road to the city of Decatur; provided, however, that in case of the failure of the county of Macon aforesaid or the towns and cities therein to subscribe or donate the one hundred thousand dollars aforesaid, such failure shall in nowise invalidate any part of this contract so far as requires the building, completing, and operating of said road from the city of Mattoon to the line between the counties of Moultrie and Macon in the direction of Decatur from the village of Bethany. If, however, Macon County or the towns therein declines, the franchises shall be transferred to the party of the second part; provided further, that the whole line, or so much thereof as has been or may hereafter be provided for by donation or subscriptions as heretofore mentioned, shall be
61 fully completed and in operation, with all suitable station-houses and rolling-stock within two years from June 1st, A. D. 1870, and in case the said party of the second part shall fail or neglect to complete and equip said portion of said road, as herein stipulated, within two years from June the 1st, 1870, as herein mentioned, then they shall forfeit all work done or materials furnished to the use of the said party of the first part and shall also forfeit all right under this agreement, and the same shall become absolutely null and void, provided such forfeiture shall not result if the party of the first part shall fail to deliver said bonds as herein provided, to wit, Mattoon Township bonds, $40,000, to be delivered upon completion of said road from the city of Mattoon to the Moultrie county line, as aforesaid, and the Sullivan Township bonds, $30,000, eight per cent., upon the completion of the road to the corporate limits to the town of Sullivan in said Moultrie County, with the trains running thereon from Mattoon, conditioned that said bonds are due and payable only on the condition that
62 the road herein named shall be the first one in operation from any railroad point to said town of Sullivan, and one hundred and fifty-five thousand dollars of Moultrie County bonds upon the completion of said road to the Moultrie and Macon County line, in the direction of Decatur from Sullivan, $100,000 of said bonds when completed to Decatur, as hereinbefore mentioned.

It is further agreed that the said party of the second part shall survey and locate the line of said road between the points hereinabove named as early as the first day of August, 1870, on the most direct and practicable route, so as to avoid, as far as possible, any unnecessary expense to the party of the first part in procuring the right of way; and it is further agreed that the party of the first part shall at its own expense obtain the right of way between the points aforesaid herein named. And in case the said party of the first part shall fail or refuse to furnish depot grounds, then the party of the second part may select and purchase such grounds as they may deem best, and in further consideration in construction, stock shall be placed in the hands of a trustee or trustees appointed
63 by the parties of both parts; said stock to be voted in person or by proxy, and to be paid to the party of the second part as the superstructure and grading shall be done, in proportion which the whole bears to $800,000 of stock, which amount of stock shall be fixed on the distance of forty miles, and which stock may be in excess of that represented by the several donations; but, as the condition of said donations are fulfilled, said stock representing the same shall be likewise

transferred and paid over. Said party of the first part shall cause first-mortgage bonds to be issued as the party of the second part shall require, in further consideration of construction, to the amount of not exceeding $19,000 per mile; and the party of the second part shall select one or more trustees. Said bonds to be used only for the purchase of iron, locomotives, cars, or other material, or constr'ing or operating said road. In making up the board of directors, said party of the second part shall have the right of nominating seven directors, who shall be elected in accordance therewith. In consider of the party
64 of the first part surrendering the selection of a majority of the directors of this co. to the parties of the second part, and the further consideration of the said party of the second part obtaining control of said company by the issuing of stock in accordance with the terms of this contract, it is further agreed that the contract for building said road shall not be charged, except with the concurrence of a majority of the directors residing along the line of the road, until said road shall be completed. It is agreed by the directors of said party of the first part, that all the acts, charters, votes, grants, or subsidies are in due form of law and valid. Any difference arising between the parties from any cause, shall be referred to disinterested persons, one of whom shall be selected by each party: and the two thus chosen shall select a third, and the decision of two of whom shall be final and binding upon both parties hereto. In the event of the parties of the second part not commencing work within six months, said party of the
65 first part may declare this contract forfeited.

"In testimony whereof the said Decatur, Sullivan and Mattoon Railroad Company, by its president, by order of the board, hereunto affixed its hand and seal.

"DECATUR, SULLIVAN & MATTOON R. ROAD COMPANY,
"By LEONIDAS CHAPIN, *Pres't pro tem.* [SEAL.]

"Countersigned by

ALFRED N. SMYSER,
"*Sec'y p. t. D., S. & M. R. R. Co.*,

"And also in testimony whereof, the said parties of the second part have hereunto affixed their hands and seals the day and year above written.

"P. C. BRINCK, [SEAL.]
"J. EDWIN CONANT & ASSOCIATES,
"By P. C. BRINCK.

"Witness:
"A. A. TAYLOR.
"WM. P. MCGUIRE.
"DOUTY PATTERSON.
"J. MEEKER."

And the court further specially finds, that to enable said county to pay the indebtedness created by said donations to said Bloomington & Ohio River Railroad Company, & to said Decatur, Sullivan and
66 Mattoon Railroad Company, evidenced by said bonds still outstanding, the interest coupons upon which were sued on and offered in evidence in this case, will require the annual assessment of taxes, which will exceed 75 cts. per $100 valuation of the taxable property in said county of Moultrie.

The defendant, by its attorney, upon the trial of said cause, asked the court to rule upon the facts set forth in the foregoing special findings: that, as a proposition of law, the vote of the people in favor of said donations did not create an indebtedness against the county prior to the performance of the conditions set forth in said petition and notices of elections, and that the bonds issued in payment of said donations, and the interest coupons offered in evidence in this case, come within the prohibition of the 8th section of the 9th article of the constitution of 1870, which provides, that "County authorities shall never assess taxes the aggregate of which shall exceed 75 cts. per $100 valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people
67 of the county."

And the court then and there ruled upon the facts aforesaid, that within the meaning of said section 8 of article 9 of said constitution, the bonds issued in payment of said donations voted, &c., as aforesaid, and the interest coupons thereto annexed and offered in evidence by the plaintiff, do not come within said prohibition of the 8th section of the 9th article of the constitution of 1870, to which said ruling of the court upon said proposition of law the defendant, by its counsel, then and there excepted.

Upon the facts found by the court as aforesaid, the court ruled, as matter of law, that the plaintiff was entitled to recover judgment against the defendant in the sum of seventeen thousand four hundred and seventy-four dollars and eighty-three cents, and rendered judgment accordingly, to which said ruling of the court and rendition of judgment as aforesaid, the defendant by its counsel then and there excepted.

And inasmuch as the foregoing evidence and findings and ex-
68 ceptions do not appear of record, the defendant, by its counsel, prays the court to sign and seal this bill of exceptions, and it is done accordingly.

S. H. TREAT, [SEAL.]
Dist. Judge.

(Indorsed:) Filed September, 19, '81. J. A. Jones, clerk.

And afterwards, to wit, on the said 19th day of September, in the year last aforesaid, came the said defendant by its attorney, and filed in said clerk's office, its bond on writ of error, in said cause, which said bond is in the words and figures following, to wit:

Bond on writ of error.

Know all men by these presents, that we are held and firmly bound unto George B. Fairfield in the penal sum of five hundred dollars, his executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administra-
69 tors or assigns, *to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators,* jointly and severally by these presents. Sealed with our seals, and dated this 13th day of September, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at a circuit court of the United States for the southern district of Illinois, in a suit depending in said court between George B. Fairfield, plaintiff, and The County of Moultrie, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the

clerk's office of the said court to reverse the judgment in the a
suit, and a citation directed to George B. Fairfield citing and
ishing him to be and appear at a Supreme Court of the
States to be holden at Washington, the second Monday of
next:

70 Now the condition of the above obligation is such, th
said County of Moultrie shall prosecute its writ to ef
answer all damages and costs if it fail to make its plea good,
above obligation to be void, else to remain in full force and vi

Z. B. WHITFIELD, [
[L. S.] *Chairman of B'rd of Super*
Z. F. BANKS. [
JACOB DUMOND. [
J. F. McDONALD. [

(Indorsed:) Filed September 19, '81. J. A. Jones, clerk.

71 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In circuit court.

I, John A. Jones, clerk of the circuit court of the Unite
within and for said southern district of Illinois, do hereby cer
the foregoing is a true and correct copy of all the papers filed
proceedings thereon had in a certain cause lately pending in sa
wherein George B. Fairfield was plaintiff and The County of
was defendant, as fully as the same now appears on file and
in my office.

In testimony whereof I have hereunto set my hand and affi
seal of said court, at my office in the city of Springfield in s
trict, this 22d day of October, in the year of our Lord one th
eight hundred and eighty-one, and of the Independence of the
States the one hundred and sixth year.

[SEAL.] J. A. JONES,

72 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To George B. Fairfield, greeting:

You are hereby cited and admonished to be and appear at a S
Court of the United States, to be held at Washington on th
Monday of October next (being the third Monday of the term
court), pursuant to a writ of error filed in the clerk's office of
cuit court of the United States for the southern district of
wherein The County of Moultrie is plaintiff and you are defen
error, to show cause, if any there be, why the judgment in
writ of error mentioned should not be corrected and speedy
should not be done to the parties in that behalf.

Witness S. H. Treat, district judge of said district, and on
judges of said circuit court, this 20th day of September, A. D.

S. H. TREAT
Dist.

73 I hereby accept service of the foregoing citation, this
of October, A. D. 1881.

SCHOLES & MATHE
Att'ys for Def't in

74 THE COUNTY OF MOULTRIE
vs.
GEORGE B. FAIRFIELD.

Error to the circuit court of the United States for the southern district of Illinois.

The County of Moultrie, plaintiff in error, by John R. Eden, its attorney, comes and says that, in the foregoing record and proceedings, there is manifest error in this:

1st. The circuit court erred in overruling the objections of the defendant (below) to the admission in evidence of the interest coupons, purporting to be issued on behalf of said county, in aid of the Bloomington & Ohio River Railroad Company; and in admitting the same in evidence.

2. The circuit court erred in admitting in evidence interest coupons, being for accrued interest on bonds purporting to be issued by said county, on the 1st day of November, A. D. 1871, as a donation, in aid of the Decatur, Sullivan and Mattoon Railroad Company; after the adoption of the constituion of 1870, not being authorized so to do, under existing law prior to the adoption of the constitution, and by the terms of the separate clause of said constitution, entitled, "Municipal subscriptions to railroads and private corporations," said county being prohibited from making said donation. And in overruling the ob'ections of the defendant (below) to the introduction in evidence of said coupons.

3. The circuit court erred in ruling as a proposition of law, upon the facts specially found by the court, that within the meaning of
75 the 8th section of the 9th article of the constitution of 1870, the bonds issued in payment of said donations, voted, &c., as aforesaid, and the interest coupons thereto annexed, and offered in evidence by the plaintiff (below) do not come within said prohibition, which provides that "county authorities shall never assess taxes the aggregate of which shall exceed 75 cts. per $100 valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county."

4th. The circuit court erred in ruling as matter of law, upon the facts specially found by the court, that the plaintiff (below) was entitled to recover judgment against the defendant (below) in the sum of seventeen thousand four hundred and seventy-four dollars and eighty-three cents, and in rendering judgment therefor.

5th. The facts specially found by the court are not sufficient to support the judgment in favor of the plaintiff (below), and the circuit court erred in rendering the same.

6th. The circuit erred in not rendering judgment for the defendant (below) upon the facts specially found by the court:

Wherefore, and for divers other errors appearing in said record and proceedings, the plaintiff prays that the same may be declared void and held for naught.

JOHN R. EDEN,
Att'y for Plaintiff in Error.

(Indorsement on cover:) No. 1137. The County of Moultrie, plaintiff in error, vs. George B. Fairfield. S. Illinois C. C. U. S. Filed 8th November, 1881.

REC. 1137—3

IN THE SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1881.

NO. 1137.

THE COUNTY OF MOULTRIE
vs.
GEORGE E. FAIRFIELD.

Error to the
U. S. Circuit Court for
The Southern Dist. of Ill.

ABSTRACT AND BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR.

JOHN R. EDEN,
ATTORNEY FOR PLAINTIFF IN ERROR.

IN THE SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1881.

THE COUNTY OF MOULTRIE	Error to the
vs.	U. S. Circuit Court for
GEORGE B. FAIRFIELD.	The Southern Dist. of Ill.

ABSTRACT.

This is an action of Assumpsit brought in the United States Circuit Court for the Southern District of Illinois, by GeorgeB. Fairfield vs The County of Moultrie.

The general issue was filed, and the parties agreed

that any legal defense might be made without special pleas.

Judgment was rendered in favor of Fairfield, and the County brings the case into this Court by Writ of Error.

The suit was brought on interest coupons detached, from two certain classes of bonds, purporting to be bonds of said county, executed by the chairman of its Board of Supervisors, and the Clerk of the County Court.

One of the issues was made to the Decatur, Sullivan & Mattoon Railroad company, or bearer, bearing date November the 1st, 1871, under the supposed authority of an Act of the General Assembly of the State of Illinois entitled "An Act to incorporate the Decatur, Sullivan & Mattoon Railroad company," in force March 26th, 1869. The parts of said Act deemed necessary to the consideration of this case are as follows, to-wit:

33 SECTION 2. The said company shall have full power and authority to locate, construct, complete, maintain and operate a railroad, with one or more tracks, from the city of Decatur, Macon county, Illinois, to the town of Sullivan in the county of Moultrie; thence to the city of Mattoon in the county of Coles, or to any other point south or east from the said town of Sullivan, in the state aforesaid; and the Board of Directors of said company shall have power to establish such tariff of rates for the transportation of persons and property, upon said railroad, as they from

time to time may determine, and to levy and collect the same for the use of said company.

34 SEC. 9. The several incorporated, cities, towns counties and towns organized under the township organization law, along or near the route of said road, or that are in any way interested therein, may, in their corporate capacities, subscribe to the stock of said company or make donations thereto, to aid in constructing or equipping said railroad; Provided, that whenever twenty-five legal voters of any such incorporated town, city, county or township, shall present to the clerk thereof a written application, requesting that an election shall be held to determine whether such incorporated town, city, county or township shall subscribe to the capital stock of said company or make a donation thereto, to aid in constructing or equipping said railroad, stating the amount and whether subscribed or donated and the rate of interest and times of payment of the bonds to be issued in payment thereof, such clerk shall receive and file such application, and shall forthwith proceed to post written or printed notices of an election, to be held by the legal voters of such incoporated town, city, county or township, which notice shall be posted in four of the most public places of such incorporated town, city, county or township, for thirty days preceding an election, and said notices shall state fully the objects of such election; and said election shall be held and conducted and

returns thereof made as provided by law in this state and the charter of any such incorporated town or city, and additional returns thereof to one or more of the corporators under this act, or of the directors chosen in persuance thereof. Each elector shall vote at such election for subscription or donation, as the case may be, and if a majority of the votes at such election shall be in favor of such subscription or donation, then the corporate authorities of such incorporated town, city, county or town supervisor of such township shall subscribe to the stock of said company, or donate thereto, as shall be determined at such election, the amount so voted at such election. and shall issue the bonds of such incorporated town, city, county or township to said railroad company in such denominations as said company shall require; the time of maturing of said bonds and the rate of interest, not exceeding ten per cent. per annum, to be in accordance with the notice calling such election ; and in all cases of the issue of bonds under this act, the same shall be countersigned by the clerk of such incorporated town, city, county or township. The word township, in this act, shall be understood to describe towns organized under the township organization laws of this state. Any incorporated town, city, county or township subscribing stock, or donating to said railroad, as aforesaid, shall, by its proper authorities, annually thereafter, levy and collect a sufficient tax on its assessed

property to pay the interest on its bonds so issued as aforesaid.

SEC. 10. The board of supervisors of Moultrie
36-37 county are hereby authorized to subscribe to the capital stock of said company to an amount not exceeding eighty thousand dollars, and to issue the bonds of the county therefor, bearing interest at a rate not exceeding ten per cent. per annum, said bonds to be issued in such denominations and to mature at such time as said board of supervisors may determine. Provided, that the same shall not be issued until the said road shall be opened for traffic between the city of Decatur and the town of Sullivan aforesaid."

No petition for an election making a donation of
47-48 seventy-five thousand dollars by Moultrie county to the Decatur, Sullivan and Mattoon railroad company was ever filed with the clerk of said county requesting that an election be held in said county in pursuance of an act entitled, "An act to incorporate the Decatur, Sullivan and Mattoon Railroad company," nor were notices of such election ever given by said clerk; but the petition for and notices of the election, under which the election was held on the 2d day of November, 1869, authorizing the making of a donation and the issuing of bonds by said county, requested the clerk "To order an election in said county

upon the question of said county donating seventy-five thousand dollars additional to the Mattoon, Sullivan and Decatur railroad company for the purpose of constructing said railway in accordance with the provisions of the charter of said company Said election to be held on the 2d day of November, 1869, and said donation to be paid by the said county upon the following conditions, namely :

49-50 Said road to commence at or near the city of Mattoon in the county of Coles, state of Illinois, thence to run on the most practicable route to the towns of Sullivan and Bethany, in the county of Moultrie and state of Illinois, thence to the city of Decatur, in the county of Macon in said state, and no portion of said donation shall be paid to said company, its agents or assigns, until said company shall build and equip said railroad through said county, and run its trains thereon upon the above described line. When said road is built and equipped and the cars running thereon through said county the said donation shall become due and payable. Said donation shall be made by said county by its issuing its bonds for seventy-five thousand dollars, payable ten years from the date thereof, or sooner at the option of said county, and to be issued in such denominations as said county may designate, and to bear interest at the rate of eight per cent. per annum, payable annually.

54 On the 2d day of November, 1869, that being the

day of the general election in said county, the voters of said county, voting at said election, voted by ballot for and against said county donating seventy-five thousand dollars additional, to the Mattoon, Sullivan and Decatur railroad company, pursuant to the petition and notice aforesaid, and the form of the ballots voted as aforesaid was " For or against the county of Moultrie donating seventy-five thousand dollars to the Mattoon, Sullivan and Decatur railroad company." The result of the election was in favor of the donation.

54-55 An abstract of the vote of said election was made by two justices of the peace of said county on the 3d day of November, A. D. 1869, and the same was filed in the office of the clerk of the county court on the 4th day of November, 1869, as follows: " For donating seventy-five thousand dollars additional to the Decatur and Mattoon railroad company, received nine hundred and eighty-three votes; Against donating seventy-five thousand dollars to the Decatur and Mattoon railroad," received one hundred and fifty-six votes."

47 On the 22d day of February, A. D. 1861, an act of the general assembly of the state of Illinois was passed and approved, entitled, " An act to incorporate the Mattoon and Decatur railroad company," authorizing the organization of an incorporation by the name and style

of "The Mattoon and Decatur railroad company," with full power and authority to survey, locate, construct and complete a railroad from Mattoon, Coles County, in the state of Illinois, and thence through, or near the town of Sullivan, in the county of Moultrie, to Decatur, in Macon county aforesaid. Said act of incorporation is still in full force and effect.

40-41-42-43 On the 16th day of December, 1869, the board of Supervisors of said county of Moultrie, after reciting that a written application of twenty-five legal voters had been filed with the county clerk of said county, requesting that an election should be held in said county in pursuance of an act, entitled, "An act to incorporate the Decatur, Sullivan and Mattoon railroad company" to determine whether said county of Moultrie should make a donation of seventy-five thousand dollars, to said Decatur, Sullivan and Mattoon railroad company, to aid in the construction of a railroad to be built by said company, in pursuance of their said charter, such donation to be paid in the bonds of said county of Moultrie, the same to be delivered to said company, when said railroad should be completed, and in good running order, through said county of Moultrie, and the cars running thereon, said bonds to be due in ten years from the issue and delivery thereof, as aforesaid, to said company, or its duly authorized agents, and to draw interest to be paid

annually at the rate of eight per cent. per annum; and that on the 19th day of August, A. D. 1869, the clerk of the county court of said county of Moultrie, in obedience to said application, and in pursuance of said act of incorporation, did receive and file said application and forthwith proceeded to post printed notices of an election to be held by the legal voters of said county of Moultrie, at the usual places of holding elections in said county, at four of the most public places in each town, or election district of said county, said election to be held on the 2d day of November, A. D. 1869, which said notices were posted as aforesaid, more than thirty days preceding said election, and stated fully the objects of said election, as set forth in said written application for the holding thereof; and that on said 2d day of November, 1869, an election was held in said county of Moultrie in pursuance of said written application, and notices, and the act aforesaid, and the same was conducted and returns made thereof, as provided by law; and that a majority of the votes cast at such election was in favor of donating said sum of seventy-five thousand dollars to the Decatur, Sullivan and Mattoon railroad company for the purposes aforesaid and upon the terms and conditions aforesaid. Ordered, "that in order to carry out the wishes of the people expressed by said vote, there be donated by said county of Moultrie, to the Decatur, Sullivan and Mattoon railroad company the

sum of seventy-five thousand dollars upon the terms and conditions set forth in the application for said election. * * * And that when said company shall have completed their said railroad through the said county of Moultrie in accordance with their said charter and put the same in good running order, and caused the trains of cars to be actually running over and upon said railroad, by the motive power of steam, there be issued and delivered to said railroad company, bonds of the county of Moultrie, in such denominations as said company may require, due and payable ten years after the date thereof, with interest thereon, payable annually, at the rate of eight per cent. per annum, to the amount of seventy-five thousand dollars, and that the same be countersigned by the clerk of said county

37-38 At the December special term, A. D. 1869, the board of supervisors of said county made an order, "That under and by virtue of the authority conferred on said board, by an act approved March 26th, 1869, entitled, 'An act to incorporate the Decatur, Sullivan and Mattoon railroad company,' the county of Moultrie subscribe to the capital stock of the Decatur, Sullivan and Mattoon railroad company the sum of eighty thousand dollars to aid in the construction of a railroad by said company in pursuance of their charter; and be it further ordered by the board of supervisors aforesaid, that when said railroad

shall be open for traffic between the city of Decatur and the town of Sullivan aforesaid, there be issued eighty thousand dollars of the bonds of said county, in denominations of not less than five hundred dollars, payable to said company, drawing interest to be paid annually, at the rate of eight per cent. per annum, the principal to be due and payable ten years after date, or sooner, at the option of the county, and that said bonds be delivered to said railroad company, in full payment of the subscription, as made as aforesaid, and it is further ordered, that the chairman of the board of supervisors of said county shall issue and deliver to said railroad company, whenever said railroad company shall have completed and equipped their said line of railway through said county of Moultrie."

38-39 Under and by virtue of the tenth section of said act to incorporate the Decatur, Sullivan and Mattoon railroad company, and in pursuance of said order, the said county of Moultrie did then and there subscribe said sum of eighty thousand dollars to said railroad company, and did then and there became liable to pay said subscription, and to issue the bonds of said county therefor, as therein provided, in pursuance of such subscription, upon the compliance by said company with the condition therein named: On the 31st day of December, A. D. 1872, the said county of Moultrie being notified that the conditions

named in said order had been complied with by said railroad company, did issue and deliver to the Chicago and Illinois Southern railway company, the successor by consolidation, of the said Decatur, Sullivan and Mattoon railroad company, bonds to the amount of eighty thousand dollars, upon the terms and conditions prescribed in said order.

56-57-58-59-60-61-62-63. On the 15th day of April, A. D. 1870, the Decatur, Sullivan and Mattoon R. R. Co. entered into a contract with P. C. Brink and others for the building of said railroad, on or before the 31st day of December, A. D. 1871, and the seventy-five thousand dollar issue of bonds, sued on in this suit, formed a part of the consideration agreed to be paid under said contract.

In the month of April, A. D. 1871, the Decatur, Sullivan and Mattoon railroad company commenced the construction of a railroad through the county of Moultrie under the provisions of the charter of the company. There was no work done thereon prior to the month of April, 1871. The road was completed through the county of Moultrie and the trains of cars of the Decatur, Sullivan and Mattoon railroad company were running on said railroad on the 20th day of October, A. D. 1871.

43-44 On the 1st day of November, A. D. 1871, the chairman of the board of supervisors of said county, and

the clerk of the county court, issued seventy-five bonds, each for one thousand dollars, due ten years after the date thereof, or sooner, at the option of said county, numbered from 1 to 75 inclusive, drawing interest at the rate of eight per cent. per annum, payable annually, with interest coupons attached, purporting to be the bonds of Moultrie county, payable to the Decatur, Sullivan and Mattoon railroad company, or bearer, and deliver the same to said company, each of which said bonds recites, that "This bond is one of a series issued in aid of the construction of the Decatur, Sullivan and Mattoon railroad, amounting to seventy-five thousand dollars, and consisting of seventy-five bonds, numbered from 1 to 75 inclusive, each for the sum of one thousand dollars, and all of which are of like tenor, and effect, and date, and are issued by said county of Moultrie by virtue of a vote of a majority of the legal voters of said county, voting at an election held in said county of Moultrie on the 2d day of November, A. D. 1869, which election was authorized by and condititioned according to the provisions of an act of the general assembly of the state of Illinois, approved March 26th, 1869, entitled, an Act to incorporate the Decatur, Sullivan and Mattoon railroad company.

46-47 On the 1st day of November, A. D. 1876, the plaintiff became the purchaser and bearer of a portion of said bonds and coupons for value before maturity, with-

out notice of any defense thereto, being the same coupons sued on in this case.

The other issue of bonds, the coupons of which were sued on in this case, was made to the Bloomington and Ohio River railroad company, or bearer, bearing date May the 27th, 1872, under the supposed authority of an act of the general assembly of the state of Illinois, entitled, "An act to incorporate the Bloomington and Ohio River railroad company," in force March 19, 1869. The parts of said act deemed necessary to the consideration of this case, are as follows, to-wit:

21 SEC. 8. The several counties, cities, villages, incorporated towns, and the several townships in counties having township organization, through or near which the said road shall be located, are hereby authorized to raise money, by a tax to be levied upon all the real and personal property in the said several counties, cities, villages, incorporated towns and townships, and to subscribe the same to the capital stock of said corporation hereby created for the purpose of aiding in the construction and completion of said road, and the said several counties, cities, villages, incorporated towns and townships, as aforesaid, are further authorized to issue bonds, drawing interest at the rate of ten per cent. per annum; which said bonds shall be negotiable and payable in the city of New

York, in not less than one nor more than ten years after the date of the same: Provided, that no subscription shall be made, or no tax shall be levied, until the same shall be voted for as hereinafter provided.

22-23 SEC. 9. Whenever twenty-five voters of any such county, city, village, town or township, shall make a written application to the county clerk of such county, or twenty-five voters of any such city, incorporated village, or town, or township, shall make application to the clerk thereof, requiring an election by the legal voters of such county, city, village, or town, or township, to determine whether such subscription shall be made and such tax levied, specifying in such application the amount, such clerk shall file such application in his office, and immediately give the notice, as required by law, for an election to be held by the legal voters of such county, city, village, or town, or township, at the usual places for holding elections, such notice to be given at least thirty days prior to the day of holding such election; and such election shall be held and conducted in all respects, and returns thereof made, as in case of annual elections.

23-24 SEC. 10. If the majority of voters voting at such election shall be in favor of such subscription, and tax for the payment thereof, then such county, city, incorporated village, or town, or township, by its proper corporate au-

thority, shall levy such tax, and subscribe to such corporation the amount thereof, to be determined or voted for at any such election, and shall issue to said corporation their bonds for such amount, drawing ten per cent. interest per annum, and payable in not less than one year, nor more than ten years. The said bonds, when issued, are to be irrevocable, and negotiable, and payable, as in section 8 aforesaid.

24 SEC. 11. If any county, city, village, or town, or township, shall subscribe to said capital stock, under the provisions of this act, and shall issue their bonds, said bonds shall be in full payment of their said subscriptions; and the supervisors of said townships, or county court of such county, and the corporate authority of such city, village or town, shall annually appoint some suitable person to represent and vote upon the stock so subscribed and levied as aforesaid.

24-25 SEC. 19. The several counties, cities, villages, incorporated towns, and several towns, or townships, in counties having township organization, through or near which said railroad shall be located, are hereby empowered to make donations and to issue bonds for the same in the manner hereinbefore provided for the construction and completion of the same.

25-26-27 On the 28th day of September, A. D. 1869, a

petition signed by twenty-five legal voters of said county, was filed with the county clerk thereof, praying that an election be held, at the usual places of holding elections in said county, on the 2d day of November, A. D. 1869, to determine whether or not said county would donate to said Bloomington and Ohio River railroad company, the sum of two hundred thousand dollars, upon said conditions. Said clerk in pursuance of said petition issued and caused to be published notices of said election. The conditions prescribed in said petition, and incorporated in said notices of election, upon which said donation should be paid by said Moultrie county to said railroad company were in words and figures, following: that is to say "and said donation to be paid by said county upon the following express conditions, namely: no portion of said donation shall be paid to said company, nor any bonds delivered to said company, its agents or assigns, until said company shall build and equip said railway through said county of Moultrie and run its trains thereon, and when said road is built and equipped and the cars running thereon through said county of Moultrie, the said donation shall become due and payable. Said donation shall be made by said county by issuing its bonds for two hundred thousand dollars, payable ten years from the date thereof, or sooner, at the option of said county, and to be issued in such denominations, as said company shall designate, and to be on inter-

est from date, at the rate of ten per cent. per annum, payable annually, and no bond shall be issued by said county, only on the express conditions that they shall be received by said company, for and in lieu of those voted by said county on the 18th day of September, A. D. 1869, and on condition that said company shall forever release said county from any and all obligation on account of the vote taken by said county on the 18th day of September, A. D. 1869.

27-28 On the 2nd day of November, A. D. 1869, an election was held in said county of Moultrie, in pursuance of said petition for and notices of election. The form of the ballots voted at said election by the legal voters of said county was: "For donating two hundred thousand dollars to the Bloomington and Ohio River Railroad company," by those voting for said proposition, and "Against donating two hundred thousand dollars to the Bloomington and Ohio River Railroad company." by those voting against said proposition."

The returns of said election were made in accordance with the forms of said ballots, and were duly canvassed by the proper canvassing officers of said county, who certified as the result of the canvass, that for donating two hundred thousand dollars as aforesaid, received one thousand and thirty-one votes, against donating two hundred thou-

sand dollars as aforesaid, received one hundred and ten votes, and said canvassing officers made return thereof according to law, and said returns were then and there placed upon the records of said county. At said election no proposition to levy a tax to pay the principal or interest upon the same to be donated as aforesaid, was submitted to the voters of said county.

28-29 The board of supervisors of said county, at their March term, A. D. 1870, made an order, and the same was duly entered upon their records, "That there be donated by said county of Moultrie, to the Bloomington & Ohio River Railroad company, the sum of two hundred thousand dollars, upon the terms and conditions set forth in the petition for and notices of election hereinbefore set forth, and that when said company shall have completed their railroad, through the said county of Moultrie, in accordance with their charter, and put the same in good running order, and cause trains of cars to be running over and upon said railroad, by the motive power of steam, there be issued and delivered to said railroad company, bonds of the county of Moultrie, in same denominations as said railroad company may require, due and payable ten years after the date thereof, with interest thereon payable annually, at the rate of ten per cent per annum, to the amount of two hundred thousand dollars, and that the same be

countersigned by the clerk of the county court of said county."

29 In the month of June, A. D. 1871, work was commenced by the Bloomington & Ohio River railroad company, upon its road, within the limits of the county of Moultrie. Prior to that time no work had been done thereon in said county. On the 20th day of May, A. D. 1872, said railroad was completed through said county, and trains of cars of the Bloomington and Ohio River railroad company were running thereon through said county.

29-30-31 On the 27th day of May, A. D. 1872, the chairman of the board of supervisors of said county, and the county clerk, by order of the board of supervisors, issued and delivered to the Bloomington and Ohio River railroad company, two hundred bonds, each for one thousand dollars, and all of like tenor and effect, except the numbers thereof, numbered from one to two hundred inclusive, and each with ten interest coupons thereto attached, the same being all of like tenor and effect, except the dates and numbers thereof; the recitals of said bonds are as follows, to-wit: "This bond is one of a series issued in aid of the construction of the Bloomington and Ohio River railroad, amounting to two hundred thousand dollars, and consisting of two hundred bonds, numbered from one to two hundred inclusive, each of which is for one thousand dollars, and

all of which are of like tenor and date, and are issued by said county of Moultrie by virtue of a vote of a majority of said county of Moultrie, voting at an election held in said county of Moultrie on the 2d day of November, A. D. 1869, which election was authorized by and was conducted according to the provisions of an act of the general assembly of the state of Illinois, approved March the 10th, 1869, entitled an act to incorporate the Bloomington and Ohio River railroad company.

32 The bonds issued as aforesaid, the coupons from which were offered in evidence in this case, were, afterwards for a valuable consideration, purchased by the plaintiff before their maturity, said plaintiff having no notice of any defense thereto.

32-33 At the time of the issuing of said bonds, the indebtedness of said county, including said bonds, was two hundred and seventy-five thousand dollars, and the valuation of the taxable property of said county was two million two hundred and seventy-nine thousand and eighty-four dollars; and the sum of ten thousand dollars per annum was required to defray the necessary ordinary expenses of said county. At the time of the rendition of the judgment in this cause, the indebtedness of the county including accrued interest, was three hundred and seventy-five thousand dollars, and the valuation of the taxable property

therein was three million five hundred and eighty-nine thousand two hundred and fifty-one dollars, and it requires twelve thousand dollars per annum to defray the necessary ordinary expenses of said county.

65-66 To enable said county to pay the indebtedness created by said donations to said Bloomington and Ohio River railroad company and to said Decatur, Sullivan and Mattoon railroad company, evidenced by said bonds, still outstanding, the interest coupons upon which were sued on and offered in evidence in this cause, will require the annual assessment of taxes, which will exceed seventy-five cents per hundred dollars valuation of the taxable property in said county of Moultrie. On trial of the cause, a jury was waived by the parties by a stipulation in writing. The facts on which the judgment was rendered, were specially found by the court.

18-19 Upon the trial of said cause, when the plaintiff offered in evidence the interest coupons detatched from the bonds issued in aid of the Bloomington & Ohio River Railroad company, the defendant, by its counsel objected to the introduction of the same in evidence, which said objections were then and there overruled by the court, to which said ruling of the court, in overruling said objections and in admitting said coupons in evidence, the defendant by its counsel, then and there excepted.

19-62-21 When the plaintiff offered in evidence, and before the same was admitted, the interest coupons, detached from the bonds issued in aid of the Decatur, Sullivan and Mattoon railroad, the defendant by its counsel then and there objected to the introduction of the same, for the reason that said coupons are for the interest on certain bonds issued as a donation to and in aid of the Decatur, Sullivan and Mattoon railroad company, after the adoption of the constitution of 1870, not being authorized under existing law, by a vote of the people prior to the adoption of said constitution, and by the terms of the separate clause of said constitution, entitled "Municipal subscriptions to Railroad and private corporations," said county was prohibited from making said donation, which said objections were then and there overruled by the court, to which said ruling of the court, in overruling said objections, and admitting in evidence said coupons, the defendant by its counsel then and there excepted.

66-67 The defendant, by its attorney, upon the trial of said cause, asked the court to rule upon the facts set forth in the special findings; that as a proposition of law, the vote of the people in favor of said donations, did not create an indebtedness against the county, prior to the performance of the conditions set forth in said petitions and notices of elections; and that the bonds issued in payment of said

donations, and the interest coupons offerred in evidence in this case, come within the prohibition of the eighth section of the ninth article of the constitution of 1870, which provides, that "County authorities shall never assess taxes the aggregate of which shall exceed seventy-five cents per hundred dollar valuation, e xcept for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county." And the court then and there ruled upon the facts, aforesaid, that within the meaning of said section 8, of article 9, of said constitution, the bonds issued in payment of said donations voted for as aforesaid, and the interest coupons thereto annexed, and offered in evidence by the plaintiff, do not come within said prohibition of the 8th section of the 9th article of the constitution of 1870, to which said ruling of the court upon said proposition of law, the defendant by its counsel then and there excepted.

67 Upon the facts specially found, the court ruled, as matter of law, that the plaintiff (below) was entitled to recover judgment against the defendant (below) in the sum of seventeen thousand four hundred and seventy-four dollars and eighty-three cents, and rendered judgment accordingly, to which said ruling of the court, and rendition of judgment as aforesaid the defendant by its counsel, then and there excepted.

ERRORS ASSIGNED.

1. The circuit court erred in overruling the objections of the defendant below, to the admission in evidence of the interest coupons, each for one hundred dol-

lars, detached from and being for the interest on bonds, purporting to be issued on behalf of Moultrie county, in aid of the Bloomington & Ohio River Railroad company, and in admitting the same in evidence.

2. The circuit court erred in admitting in evidence, interest coupons, being for accrued interest on bonds purporting to be issued by said county on the 1st day of November, A. D. 1871, after the adoption of the constitution of 1870 as a donation in aid of the Decatur, Sullivan and Mattoon Railroad company, the county not being authorized so to do under existing law by a vote of the people, prior to the adoption of said constitution; and by the terms of the separate clause of said constitution entitled "Municipal subscriptions to railroads and private corporations," said county being prohibited from making said donation; and in overruling the objections of the defendant to the introduction in evidence of said coupons.

3. The circuit court erred in ruling as a proposition of law, upon the facts specially found by the court; that within the meaning of the 8th section of the 9th article of the constitution of 1870, which provides that "County authorities shall never assess taxes, the aggregate of which shall exceed 75 cents per $100 valuation except for the payment of indebtedness existing at the adoption of the constitution, unless authorized by a vote of the peo-

ple of the county," the bonds issued in payment of said donations voted etc., as aforesaid, and the interest coupons thereto annexed, and offered in evidence by the plaintiff below, do not come within said prohibition of the 8th section of the 9th article of the constitution of 1870.

4. The circuit court erred in ruling as matter of law, upon the facts specially found by the court, that the plaintiff below was entitled to recover judgment against the defendant below in the sum of seventeen thousand four hundred and seventy-four dollars and eighty-three cents, and in rendering judgment therefor.

5. The facts specially found by the court are not sufficient to support the judgment in favor of the plaintiff below, and the court erred in rendering the same.

6. The circuit court erred in not rendering judgment for the defendant below upon the facts specially found.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR.

We understand the question presented by the special finding of facts is whether they are sufficient to support the judgment. If either, or both classes of bonds, the interest coupons of which were admitted in evidence by the court below, be invalid, the judgment should be reversed. There is no question between the parties as to the amount

of the judgment, if both classes of bonds are legal obligations of the county.

The first question to be considered is, are the bonds issued to the Decatur, Sullivan & Mattoon Railroad company, purporting to be bonds of Moultrie county, a legal and valid indebtedness of said county. The charter of said company gives the authority under which it is claimed these bonds were issued. The 9th section provides that "The several incorporated towns, cities, counties and towns organized under the township organization law, along or near the route of said road, or that are in any way interested therein, may, in their coporate capacities, subscribe to the stock of said company or make donations thereto, to aid in constructing or equipping said railroad; (here follows a proviso of the section, making subscriptions and donations conditional upon a vote of the people, and prescribing the mode of holding elections, etc.) See Record page 34.

Section 10 provides, that "the board of supervisors of Moultrie county are hereby authorized to subscribe to the capital stock of said company to an amount not exceeding eighty thousand dollars, and to issue the bonds of the county therefor, bearing interest at a rate not exceeding ten per cent per annum—said bonds to be issued in such denominations and to mature at such time as said board of

supervisors may determine: Provided, that the same shall not be issued, until the said road shall be opened for traffic between the city of Decatur and the town of Sullivan aforesaid." See record page 36 and 37.

On the 16th day of December, A. D. 1869, the board of supervisors of Moultrie county subscribed $80,000, under authority of the 10th section of said act, and on the 31st day of December, A. D. 1872, the road then being open for traffic between the city of Decatur and the town of Sullivan, bonds of said county were issued and delivered to said company in payment of said subscriptions. See record page 38 and 39.

We respectfully submit, that when the county of Moultrie subscribed $80,000 to the Decatur, Sullivan and Mattoon Railroad company, under authority of section 10 of said act, it had given all the aid in that behalf, the law authorized it to give.

The plain language of sections 9 and 10, seems to give, to all other municipalities, "along or near the route of said road, or that are in anyway interested therein," the power upon an affirmative vote of the people, to subscribe or donate to said railroad company, in whatever amount they may be authorized, by a vote of the people, in the manner preseribed in section nine—and to the board of supervisors of Moultrie county, authority "to subscribe to

the capital stock of said company, to an amount *not exceeding eighty thousand dollars*, and to issue the bonds of the county therefor, etc:" Provided that the same shall not be issued until the said road shall be opened for traffic between the city of Decatur and the town of Sullivan, aforesaid." The authority given in section nine is broad enough to include Moultrie county; but section ten makes full provisions for aid to be given in the premises by Moultrie county, and thus, by giving to it special power, withholds from it the general power contained in the preceding section. By thus reading the two sections together and witholding from the 9th only what is embraced in the 10th, we give full operation to both; and bring ourselves within the rule of construction laid down by Coke—that "The good expositor makes every sentence have its operation; gives effect to every word, will not construe it so that anything shall be vain and superfluous, but so expressed, that one part of the act may agree with the other, and all may stand together." The supreme court of Illinois, in an opinion, quoting approvingly the above paragraph from Coke, says, "It is a rule of construction that statutes are to be read without breaks or stops; and it is never clear that words belong to any particular branch of a sentence. It is also a rule, that the most natural exposition of a statute is, to construe one part by another part of the same statute, and thus from a view of the whole, discover th-

meaning. Pertect vs. the people, 65 Illinois, page 230. Tested by these rules of construction, and the view we take of the case, makes sections nine and ten operative and harmonious. To hold that section nine applies to Moultrie county, removes the limitation placed upon the board of supervisors of that county by section ten, prohibiting a subscription exceeding eighty thousand dollars. Also nullifies the proviso, that bonds of the county should not issue in payment of the subscription, until the road should be opened for traffic between the city of Decatur and the town of Sullivan, aforesaid. Had the legislative intent been to include the county of Moultrie, in the grant of power given in section 9, and to confer additional power by section 10, the easy and natural way would have been to express the fact in plain language. Instead of language showing an intent to enlarge the power granted, section 10 is a plain limitation of the grant of power, so far as Moultrie county is affected. Should it be held that under section 9, the county of Moultrie may both subscribe and donate to this Railroad company, such amounts as a majority of the voters may authorize at an election held under the provisions of section 9, of the act of incorporation, section 10 becomes a nullity. If the latter section were not intended as a limitation upon the power of the county to incur indebtedness in aid of the proposed railroad, its language has no meaning. Another rule of

construction is important in this connection. *Legislative Acts* empowering counties to aid railroad corporations are to be strictly construed.

The supreme court of Illinois, upon this point says "It is a well settled rule of construction, that statutes extending the power of corporations, or increasing the burdens of taxation, must be strictly construed. The wisdom of this rule cannot be questioned. Recent experience demonstrated the necessity of limiting the powers of the legislature very materially in the enactment of such laws, and it was accordingly done by a provision of the constitution." Chestnutwood et al vs. Hood et al, 68 Ills. 32.

The supreme court of the United States says "The object of this court has been in cases of a like kind, and it is still its purpose, to give to the contracts of counties for the purchase of railroad stocks and for borrowing money, to aid in the construction of railroads and other internal improvements, a strict interpretation of the legislative acts empowering them to do one or the other." Moran et al vs. the commissioners of Miami county, 2 Wall, 722.

Apply the rules of strict construction to the grant of power to Moultrie county to give aid to this railroad corporation; and we find authority in express language for the county to subscribe to the capital stock not exceeding eighty thousand dollars, and to issue bonds in payment

thereof, when the railroad is open for traffic between the city of Decatur and the town of Sullivan. "The express mention of one thing implies the exclusion of another." The limitation of an amount not exceeding eighty thousand dollars is express, and needs no implication to aid it. The authority of the county to subscribe is expressly mentioned, the authority to donate not being mentioned is excluded.

The proviso forbidding the issue of the bonds until the road should be open for traffic between the city of Decatur and the town of Sullivan, qualifies the grant of power to Moultrie county. The legislature placed these limitations upon the authority of the board of supervisors, for the purpose of protecting the people of the municipality from the burdens of excessive taxation. The law determines, that the interests of the people of the county are subserved by opening a railroad for traffic between the city of Decatur, and the county seat of the county. Less than this, according to the legislative intent, will not justify the county authorities in inflicting the burdens of taxation upon the people. Other municipalities, having different interests to subserve, may if they chose, give aid to the enterprise, imposing such terms, as to the time and manner of doing the work, as may be prescribed by a vote of the people. The legislature was the competent authority to determine the conditions upon which municipalities might

subscribe or donate to railroad corporations, and when the power was conferred it could be executed only within the terms of the grant.

The separate section of the constitution of 1870, entitled "Municipal subscriptions to railroads or private corporations," provides, that "No county, city, town, or township or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: Provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions when the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption."

At the time of the adoption of the constitution, there being no existing laws, authorizing the county of Moultrie to make a donation to the Decatur, Sullivan and Mattoon railroad company; and there having been no vote of the people of the county, under existing laws, prior to the adoption of the constitution, in favor of such donation, the bonds and interest coupons thereto attached, issued to said company, and purporting to be bonds of Moultrie county; and admitted in evidence in this case, are null and void. Hence the court below erred in admitting the same in evidence and giving judgment therefor. Section

10, of the act of incorporation, the only part thereof applicable to Moultrie county, neither authorizes a vote of the people of Moultrie county upon the question of donation; nor does it authorize the making of a donation by the county to the railroad company, with or without a vote.

In point of fact the record does not show, otherwise than by the recitals of the bonds, that the people of the county ever voted to donate the bonds in question to the Decatur, Sullivan and Mattoon railroad company. Upon this point the court finds, that "No petition for an election making a donation of seventy-five thousand dollars by Moultrie county to the Decatur, Sullivan and Mattoon railroad company was ever filed with the clerk of said county requesting that an election be held in said county in pursuance of an act entitled "An act to incorporate the Decatur, Sullivan and Mattoon railroad company, "nor were notices of such election ever given by said clerk; but the petition for and notices of the election, under which the election was held on the 2nd day of November, 1869, authorizing the making of a donation and the issuing of bonds by said county, requested the clerk, "To order an election in said county, upon the question of said county donating seventy-five thousand dollars additional to the Mattoon, Sullivan and Decatur railroad company, for the purpose of constructing said railway in accordance with the provisions of the charter of said company. Said elec-

tion to be held on the 2nd day of November, 1869, and said donation to be paid by said county upon the following conditions namely: Said road to commence at or near the city of Mattoon in the county of Coles, State of Illinois, thence to run on the most practicable route to the towns of Sullivan and Bethany, in the county of Moultrie and state of Illinois, thence to the city of Decatur in the county of Macon, etc." See record 49 and 50. The record further shows, that the election was held in pursuance of the petition and notices, and that the ballots voted were "For and against the county of Moultrie donating seventy-five thousand dollars to the Mattoon, Sullivan and Decatur railroad company. Record page 54.

An act of the general assembly of the state of Illinois, took effect on the 22nd day of February, A. D. 1861, and is still in force, entitled "An act to incorporate the Mattoon and Decatur railroad company," authorizing the organization of an incorporation by the name and style of "The Mattoon and Decatur railroad company," with full power and authority to survey, locate, construct and complete a railroad from Mattoon, Coles county, in the state of Illinois, and thence through or near the town of Sullivan, in the county of Moultrie, to Decatur, in Macon county aforesaid. It will thus be seen that by the vote taken in Moultrie county on the 2nd of November, A. D. 1869, in favor of a donation to the Mattoon, Sullivan and Deca-

tur railroad company, there was not a mere misnomer, whereby the corporation to be aided was described by a wrong name. Reference to the charters of the two corporations will materially aid in determining to which the donation was intended to be made. One of the conditions upon which the donation was to be made, was, that said road should "commence at or near the city of Mattoon in the county of Coles, state of Illinois, thence to run on the most practicable route to the towns of Sullivan and Bethany, in the county of Moultrie and state of Illinois, thence to the city of Decatur, etc." The Mattoon and Decatur railroad company was authorized by its charter to survey, locate, construct and complete a railroad from Mattoon, Coles county, Illinois, and thence through or near the town of Sullivan, in the county of Moultrie, to Decatur, in Macon county, aforesaid. This is substantially the route called for by the petition and notices of election; the construction of a railroad on that route, through the county, being a condition precedent to the making of the donation. "The charter of the Decatur, Sullivan and Mattoon railroad company, in force March 26th, 1869, does not require the construction of a railroad between Mattoon and Sullivan. The route prescribed in the charter calls for a road to be built from the city of Decatur, Macon county, Illinois, to the town of Sullivan in the county of Moultrie; thence to the city of Mattoon in the county of Coles, *or to*

any other point south or east from the said town of Sullivan." No authority is given by law for calling an election by a municipality, to vote upon the question of making a donation by such municipality, to the Decatur, Sullivan and Mattoon railrood company; except upon the petition of twenty-five legal voters thereof, requesting the clerk to call such election. There having been no such petition filed, nor any election held upon that question in Moultrie county; even should the court hold that the grant of power in section 9 of the charter, extends to Moultrie county, the bonds in question issued to that corporation, are null and void, not having been authorized by a vote of the people of the county prior to the adoption of the constitution of 1870. This objection may be answered by the claim, that the board of supervisors have decided, that the donation voted by the people on the 2d of November, A. D. 1869, was in aid of the Decatur, Sullivan and Mattoon railroad company. The law devolves no such duty upon the board of supervisors. We do not understand, that when the people vote aid to one railroad corporation, the municipal authorities have the power to transfer it to another, by an unlawful or erroneous decision.

The effect to be given to the recitals in the bonds, in view of former decisions of the court, becomes important. If there is an absence of power under the law, to make the donation in any event, it will not be claimed that

the recitals in the bonds are of any value. The point now being considered is: assuming that the grant of power in the 9th section of the charter extended to Moultrie County, and that the people voted in favor of donating to one railroad corporation, and the county authorities issued bonds in payment of the donation to another—what effect shall be given to the recitals in the bonds? In this case the recitals in the bonds are to the effect that the bonds are issued under authority of the charter of the Decatur, Sullivan and Mattoon railroad company and in pursuance of a vote of the people at an election held on the 2d day of November A. D. 1869. The constitution prohibits the county from making the donation, unless authorized by a vote of the people prior to its adoption. In our view there was no prior vote. There being no power in the county to make the donation or execute the bonds at the time they were issued, could the county authorities evade the constitutional prohibition by a recital in the bonds? We understand it to be well settled, that where the power exists, under the law to issue the bonds; the recitals, showing a compliance with the conditions to be performed before their issue, cannot be questioned, as against the rights of a bona fide holder. But a purchaser must ascertain at his peril, that the municipal officers are empowered to issue the bonds When the constitution was adopted, the law of the state was settled; that if a donation by a county to a

railroad company had been authorized by a vote of the people under existing law prior to such adoption, the power to make the donation continued in such county; if not authorized by such vote, the making of such donation was absolutely prohibited. The authority of municipal officers and the rights of the people in the premises, were settled by law; and did not depend upon the future acts of those officers, upon whom the prohibition was intended to operate. It cannot be shown that in placing this prohibition in the construction, it was the intention that the officers whose powers were restrained by it, should in the future be the sole judges as to whether or not they were forbidden to incur municipal indebtedness. That question was settled by the fundamental law of the state, which the recitals in a bond cannot change. For the reasons stated we believe that the bonds in question do not come within the rule, laid down by this court, holding that municipal corporations are estopped from calling in question the recitals of such bonds.

BONDS ISSUED TO THE BLOOMINGTON AND OHIO RIVER RAILROAD COMPANY.

The question affecting this issue of bonds, a portion of the interest coupons of which were admitted in evidence by the court below, and judgment rendered therefor; arises upon the effect to be given to the 8th section of

the 9th article of the constitution of 1870; which provides, that "County authorities shall never assess taxes, the aggregate of which shall exceed 75 cents per $100 valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county." It may be held, that if the bonds in question come within the prohibition just quoted, it does not impair their validity, but only defeats the enforcement of their collection, and that this point is not now fairly before the court for decision. Under the laws of Illinois, taxation is the only means by which municipal corporations can raise money to satisfy judgments. Hence on the trial of the cause, the point was made, that under the finding of facts, the vote of the people in favor of the donation, did not create an indebtedness against the county, prior to the performance of the conditions set forth in said petitions and notices of elections; and that the bonds issued in payment of said donations, and the interest coupons offered in evidence in this case, come within the prohibition of the eighth section of the ninth article of the constitution of 1870; and the court then and there ruled thereon, that within the meaning of said section 8, of article 9 of the constitution, the bonds issued in payment of said donations voted as aforesaid, and the interest coupons thereto annexed and offered in evidence by the plaintiff, do not come within the prohi-

bition of the 8th section of the 9th article of the constitution of 1871. The court below has already decided the point, and if the judgment is affirmed by this court without qualification, a tax must be levied, limited only by the amount necessary to pay the judgment; or the coercive powers of the court will be applied to compel such levy. Both parties desire to have the question settled on this record, in order that the litigation may end with the termination of this suit. These bonds were issued as a donation by the county to the Bloomington & Ohio River Railroad company, under section 19 of the act of incorporations, which provides that "the several counties, cities, villages, incorporated towns, and the several towns or townships in counties having township organization, through or near which said railroad shall be located, are hereby empowered to make donations and to issue bonds for the same in the manner hereinbefore provided for the construction and completion of the same." The election authorizing the issue of the bonds was held on the 2nd day of November, A. D. 1869. The form of the vote was for or against donating two hundred thousand dollars to the Bloomington & Ohio River railroad company. No election was held upon the question of levying taxes to pay the debt. One of the conditions prescribed in the petition for and notices of election, upon which the donation was to be made was—that "No portion of said donation shall be paid to said

company, nor any bonds delivered to said company, its agents or assigns, until said company shall build and equip said railway through said county of Moultrie and run its trains thereon, and when said road is built and equipped and the cars running thereon through said county of Moultrie, the said donation shall become due and payable." At their March meeting in 1870, the board of supervisors of the county made an order that there be donated by said county of Moultrie, to the Bloomington & Ohio River Railroad company, the sum of two hundred thousand dollars, upon the terms and conditions set forth in the petition for and notices of election. On the 8th of August, 1870, when the new constitution took effect, no part of the condition upon which the donation was to be made, had been performed by the railroad company. All that had been done was the offer of the county, under certain prescribed conditions, to make the donation under authority of section 19 of the charter and pursuant to the vote of the people of the county. There had been no acceptance by the company. No offer to perform the conditions—No action indicating an intention to perform the conditions at any time in the future. The company had incurred on expense—Had suffered no inconvenience, nor taken a single step on the faith of the proffered donation of the county. Can it be claimed upon this state of facts, that at the adoption of the constitution there was an existing indebtedness of the

county of Moultrie to the Bloomington and Ohio River railroad company, on account of the proposed donations? We answer unhesitatingly there was then no indebtedness from the county to the railroad company, unless a proffered gift to be delivered upon conditions, creates an indebtedness from the donor to the donee without the performance of the conditions or an acceptance on the part of the donee. Suppose the conditions had never been performed by the company, would it be claimed that the railroad company could coerce the county to make the donation and issue the bonds in payment thereof? We think no one would make such claim. Yet, in order to successfully maintain the point, that the bonds in question are not subject to the prohibition in section 8 of article 9, of the constitution, limiting the rate of taxation, in effect the position must be sustained that in the position of the parties when the constitution was adopted, there was an indebtedness of the county to the railroad company, or a valid contract between the parties out of which an indebtedness would accrue, that could be enforced in the courts It is an elementary principal in law, that "A donation is never perfected until it has been accepted; for an acceptance is requisite to make the donation complete." Bouvier's law dictionary, vol. 1, pages 501, 502. A law of the state of Illinois, in force, covering the entire period occupied in the proceedings relative to the issue of the bonds in question, may be

pertinent to this question. Sec. 7 of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16th, 1869, provides: That "any county, township, city or town, shall have the right, upon making any subscription or donation to any railroad company to prescribe the conditions upon which such bonds, subscriptions or donations shall be made, and such bonds, subscriptions or donations shall not be valid or binding until such conditions precedent shall have been complied with. "Public laws of 1869, pages 319, 320. Revised statutes of 1877, section 17, page 754. In prescribing conditions upon which this donation should be made, the county of Moultrie acted under authority of this law. The conditions being prescribed. the law declares that such bonds, subscriptions or donations shall not be valid or binding until such conditions precedent shall have been complied with." In giving effect to this law the supreme court of Illinois says "To give full force and effect to the peremptory words of the statute, and from analogy to the principles and decisions which have been adverted to, we think the proper construction here is, to hold that by virtue of the express declaration of the statute, the bonds in question are not valid and binding until the conditions named shall have been complied with even in the hands of innocent holders without notice." Town of Eagle vs Kohn et al 84 page 292. See

also Alley vs. the board of supervisors of Adams county, 76 Illinois, page 101. In the case at bar the making of the donation and the delivery of the bonds were forbidden, until the railroad company should build and equip its railway through the county and run its trains thereon; consequently when the constitution was adopted, under the conditions upon which the donation was to be made, and the provisions of the statute just quoted, the donation *was not valid* or binding. Then how could it be an existing indebtedness of the county? And if not at that time an existing indebtedness of the county, why are not the county authorities prohibited by the 8th section of the 9th article of the constitution from assessing taxes in the county the aggregate of which shall exceed 75 cents per $100 valuation, to pay the bonds issued afterwards; the conditions upon which their issue depended, having been wholly performed after the adoption of the constitution. If there was no indebtedness at the time of the adoption of the constitution, nor a valid contract that might ripen into an indebtedness, the parties could not after such adoption so change their relations as to create an indebtedness of the county, and withdraw the same from the limitation aforesaid on the power to assess taxes.

After this limitation upon the power of counties to assess taxes exceeding in the aggregate 75 cents per $100 valuation, the Bloomington and Ohio River railroad com-

pany, proceeded to perform the conditions upon which the donation of $200,000 was to be made by the county. In the month of June, 1871, work was commenced by the company on its road within the limits of Moultrie county. On the 20th of May, A. D. 1872, the road was completed through the county. On the 27th of May, A. D. 1872, the chairman of the board of supervisors and county clerk, by order of the board, issued the bonds in controversy.

At the time of the issuing of the bonds the indebtedness of the county, including said bonds, was two hundred and seventy-five thousand dollars, and the valuation of the taxable property of said county was $2,279,084; and the sum of $10,000 per annum was required to defray the necessary ordinary expenses of the county. The levy of 75 cents per $100.00 upon that valuation would realize the sum of $17.063 and thirteen-hundredths, or $7.063 and thirteen-hundredths in excess of the necessary ordinary expenses of the county; whilst the annual interest charge upon the entire debt—$275,000, which amount includes the two issues of bonds in this suit—$200,000 at 10 per cent and $75,000 at 8 per cent—was $26,000, leaving an annual deficiency of $18,936 and 86 cents.

At the time of the rendition of the judgment the indebtedness of the county including accrued interest was $375,000, and the valuation of the taxable property

therein was $3,589,251, and it required $12,000 per annum to defray the necessary ordinary expenses of the county. The levy of 75 cents per $100 on the valuation of property would realize the sum of $26,919 and 37 cents or $14,919 and 37 cents in excess of the necessary ordinary expenses of the county, whilst the annual interest charge—adding to the interest on the principal sum, which is the same as before—$6,000 for interest on overdue coupons, amounts to $32,000, leaving a deficiency of $17,080 and 63 cents.

From these facts found by the court, it is apparent, that when the bonds were issued, the indebtedness of the county, including the sum represented by the bonds, was so great that an assessment of taxes by the county authorities, in excess of the constitutional limitation, became necessary to pay the annually accrueing interest thereon; and that when the judgment was rendered the same condition continued; with no evidence upon which to found an opinion, that any part of the principal could ever be paid. Upon this point the court below found the fact, that "To enable the county to pay the indebtedness created by said donations to said Bloomington and Ohio River Railroad company and to said Decatur, Sullivan and Mattoon Railroad company, evidenced by said bonds, still outstanding, the interest coupons upon which were sued on and offered in evidence in this cause, will require the annual as-

sessment of taxes, which will exceed 75 cents per $100 valuation of the taxable property of said county of Moultrie." See Record page 18, 19.

It may be well to inquire into the effect upon the county, of the acts of the railroad company, subsequent to the adoption of the constitution, in performing the conditions upon which the donation was to be made, upon which performance the bonds were issued by the county authorities. The answer to this question depends upon whether or not there was an indebtedness of the county at the time of the adoption of the constitution on account of the donation; or a valid contract between the county and the railroad company then existing, upon which an indebtedness might thereafter accrue. If the vote of the people authorizing the donation upon certain conditions creates an indebtedness without the acceptance by the donee, or the performance of the conditions, the indebtedness existed at the adoption of the constitution, and the performance of the conditions was unnecessary. If there was a valid contract between the county and the railroad company, prior to the adoption of the constitution, under which the county was bound to make the donation upon the performance of the conditions imposed upon the company, the debt would become due, upon the performance of the conditions, and would not be affected by the limitation upon the taxing power imposed by the constitution. In order to create an

indebtedness there must be an actual liability at the time, either to pay then or at a future time. This liability must be such as can be enforced by the courts. We think we have already shown that at the time of the adoption of the constitution no indebtedness from the county to the railroad company existed. A contract is an agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act, and each acquires a right to what the other promises." In this case the railroad company had not promised the county to do anything or to forbear doing anything. The county had offered to give the railroad company $200,000, if it would build a railroad, not for the county but for itself, through the county, and the company had neither built the road nor agreed or promised to do it. Then there was no contract between the parties at the time of the adoption of the constitution. If the liability accrued after the adoption of the constitution, then the rights of the parties are controlled by its limitations.

The form of the grant of power to the county, and the construction that has been put thereon by the supreme court of the state, have an important bearing upon the question under consideration. The authority is given in section 19 of the charter, and provides that county, etc., through or near which said road shall be located, are hereby *empowered* to make donations, and to issue bonds for

the same, etc. Under this grant of power it was discretionary with the county authorities to make the donation or not, as they chose, even after the vote of the people authorized them to do so. Now if prior to the issue of the bonds there was at any time an indebtedness by the county to the railroad company, there must have been a legal remedy to compel the county to discharge that indebtedness. Yet if there had been no constitutional limitation upon the rate of taxation or other legal impediment, when the railroad company had completed the conditions upon which under the vote of the people the donation was to be made, the county authorities had the sole option of deciding whether or not the donation should be made and the bonds issued.

The grant of power is permissive, not mandatory. The county is *empowered*, not required, to make the donation upon the affirmative vote of the people. Upon this point in a case when the grant of power was similar to that under consideration, the supreme court of the state says: "This section contains no language that can by any rule of interpretation, be held to impose it as a duty to make such subscription. It only confers the authority, and provides that they may subscribe for, or purchase stock, under its restrictions and limitations. Neither the context or the language employed in the first section makes a subscription imperative." The People ex. rel. vs Tazewell

county, 22 Ills., page 147. See also The People ex. rel. etc., The county board of Cass county, 77 Ills., page 438. The People ex. rel. vs. Dutcher, 56 Ills., page 144. The court has uniformly held from the case reported in 22 Ills., to the present time, that when the grant of power to subscribe or donate to a railroad company is merely permissive, after an affirmative vote of the people, it is discretionary with the county authorities whether or not they will make the subscription or donation.

The vote of the people for the donation under the rulings of the court, does not constitute a contract between the county and the railroad company. Upon this point in the case of The People ex. rel. vs. Cass county, just referred to, the court says: "A county, except when so specially authorized by statute, cannot contract through the electors alone, either by the assistance of the ballot box or otherwise. In counties under township organization, the board of supervisors, and in counties not under township organization, the board of county commissioners, are, alone, the agencies by and through which the law has provided counties shall contract in respect to subscribing to the capital stock of railroad companies. The board of county commissioners of Cass county never having subscribed for the capital stock of the relator, nor entered into any contract binding the county to do so, it follows no offer was held out to the relator upon the faith of which it was to

act. In relying upon the vote at the election, it trusted to a mere naked power and nothing more." In another case the same court says: "Yet the inquiry becomes pertinent what was the legal status of this particular donation when this constitutional provision went in force in 1870? At that time the bonds had not been issued, nor is it even claimed the railroad company had done work or expended money on the faith of the proposed donation, or had accepted the conditions attached to the donation, or had given notice of the acceptance of the donation. It cannot be claimed there was at that time any contract between the township and the railroad company to be impaired, or any right vested in the company." Lippincott et. al. vs. The town of Pana et. al. 92 Ills, page 24. But the clearest statement of the law upon this subject is by the supreme court of the United States. This court says: "But the town was not empowered to make the donation until the road was located and constructed through the town. It had no authority to make a contract to give; and the acceptance was an undertaking to do nothing which the company was not bound to do before the authority of the town to make a donation or to engage to make a donation, came into existence. What is called the acceptance of the railroad company cannot be construed as an engagement to locate and build the railroad through the town. It amounted to no more than saying, If we build our railroad through

your town we will receive your gift. There was therefore, no consideration for the town's promise to give, even if the popular vote can be construed as a promise. There was no contract to be impaired." Town of Concord vs. Portsmouth Savings Bank, 92 U. S. Reports, page 628. The court has since modified the rulings in this case, so as to harmonize with the decision of the supreme court of Illinois, holding that donations are within the saving clause of the state constitution, which prohibits municipal corporations from granting aid to railroads and private corporations except under authority of a vote of the people under existing laws prior to the adoption of the constitution; but that part of the opinion just quoted is in accord with the decisions of the state court and remains unchanged. The authorities quoted seem to establish beyond question, that nothing had been done prior to the adoption of the constitution, creating an indebtedness from the county to the railroad company.

That no acts of the parties after the adoption of the constitution, could create a liability of the county, not subject to the restraint on the taxing power, contained in that instrument, seems clear. Authorities in favor of that position are uniform. Judge Dillion says: "But before any subscription is made, or before any contract to subscribe is completed, the authority to subscribe may be repealed or taken away by legislative or constitutional provision. And

if the authority to subscribe depends on a precedent vote of the people, the vote without a subscription or an agreement to subscribe, does not create a contract, nor preclude the repeal of the authority to make the subscription. The law of Municipal Bonds, page 40.

In a leading case upon this question, the supreme court of the United States says; "The acts of 1848 and 1849, already referred to, make it the duty of the board of commissioners to subscribe for the stock, if a majority of the qualified voters at an election determined in favor of such subscription. The election took place on the 1st Monday of March, 1849, when a majority of the votes cast was for the subscription. The constitution of Indiana took effect the 1st of November, 1851, but the subscription was not made till September, 1852, and the bonds were issued after this date. It is insisted that the contract of subscription became complete, when, at the election a majority of the votes was cast in its favor, and did not require the form of a subscription on the books for the stock of the railroad company to make it obligatory upon the parties: and which if true, it is agreed the contract would be protected within the constitution of the United States, as it would then have been complete before the constitutional prohibition of Indiana. But the court is unable to concur in this view. It holds that a subscription was necessary to create a contract binding upon the county. On one side, to take

the stock and pay the bonds; and upon the other, to transfer the stock and receive the bonds for the same. Until the subscription is made, the contract is unexecuted, and obligatory upon neither party." Aspinwal vs. Commissioners of the county of Daviess, 22 Howard, 364.

In a very recent case, William B. Wadsworth vs. the board of supervisors of Eau Claire county, tried at the October term, 1870, the supreme court reaffirms the doctrine laid down in Aspinwall vs. Daviess county. The court says "The main question then presented is, whether the county of Eau Claire ever came under a legal obligation to execute and deliver to the railroad company, county bonds to aid in the construction of the road from Tomah to Lake St. Croix. The decision of that question it seems to the court is controlled by the principles announced in Aspinwall, etc., vs. commissioners, etc., 22 Howard, 364. * * * We held in that case, that the popular vote did not itself create a vested right in the railroad company to the bonds, and that a subscription was necessary to create a contract binding the county to issue bonds in payment of the stock and binding the company to issue stock for the bonds. 'Until the subscription is made," said Mr. Justice Nelson, speaking for the whole court, "the contract is unexecuted and obligatory upon neither party." Hence the new constitution was held to govern the case, and from the time of its adoption to have withdrawn from

the county commissioners all authority to make subscriptions to the stock of incorporated companies, except in the manner and under circumstances prescribed by that instrument. * * * The election at which the people gave their sanction to railroad aid had, as we have seen, no other effect than to confer power upon the supervisors to issue bonds, and did not place them under any legal obligations to the railroad company to exercise the power granted. The railroad company had not, prior to the passage of the act of 1872, acquired any perfect or vested right to the donation. The repealed statute of 1861, was, under the circumstances a total abrogation or obliteration of the law repealed, as much so as if the latter had never existed." So we say in this case, the railroad company had acquired no vested right to the donation by the affirmative vote of the people conferring the power upon the county authorities to issue the bonds on the performance of the conditions prescribed: they were not placed under any legal obligations to the company, to execute the power granted. The railroad company had not prior to the adoption of the constitution, acquired any vested right to the donation; hence the bonds could not be thereafter issued, without being subjected to the constitutional limitation of 75 cents per hundred dollar valuation, upon county authorities, in the assessment of taxes for the payment of the principal and interest of the bonds.

The inquiry arises, do the bonds in question come within the rule of the cases we have been considering? In the cases of Marcy vs. township of Oswego and Humbolt township vs. Long, this court held, when there was a proviso to the grant of power, that the amount of bonds voted by any township should not be above such sum as would require a levy of more than one per cent per annum on the taxable property of such township to pay the interest; and the recitals in the bonds showed that they were issued in accordance with the law granting the power and in pursuance of a vote of the people, etc.,—that, though there was an over issue, the township was estopped from making this defence against a bonafide holder of the bonds. The court says "The assessment rolls of the township may have been proper evidence for the consideration of the board of county commissioners when they were inquiring what the value of the taxable property of the township was, but the bonds are not invalid in the hands of a bonafide holder by reason of their having been voted and issued in excess of the statutory limit, as shown by the rolls." 92 U. S., 637. There is a manifest difference between these cases and the one under consideration. In the former, the statute contained a proviso, fixing a standard by which the municipal authorities were to be governed, in ascertaining the amount of bonds to be issued. Necessarily they must ascertain that fact before the bonds were is-

sued. Having examined and decided what amount of bonds they were authorized to issue under the law, and having put them into circulation, the court says the township cannot impeach them in the hands of a bonafide holder. In the case at bar the county authorities are prohibited by the constitution, from assessing taxes sufficient to pay the debt or annually accrueing interest on the bonds in controversy. The question as to the amount of taxes to be levied, or the amount of indebtedness that might be incurred within the limit of the taxing power, was in no manner submitted to the discretion or judgment of the board of supervisors to be determined by them prior to the issue of the bonds. They were told by the supreme law of the state, that for indebtedness then incurred, they could assess taxes, amounting in the aggregate, to no more than 75 cents per $100 valuation, unless authorized by the vote of the people of the county; and the defendant in error, when he purchased the bonds in suit, received the same information in like authorative manner. Nor were there recitals in the bonds to mislead the purchaser on this point. The recitals are, that the bonds were issued by virtue of a vote of a majority of said county of Moultrie, on the 2nd day of November, A. D. 1869, which election was authorized by and was conducted according to the provisions of an act of the general assembly of the state of Illinois. Approved March 10th, 1869, entitled an act

to incoporate the Bloomington and Ohio River railroad company. No reference is made to the constitution of 1870, or to an election held under its provisions. The law referred to is older than the constitution, and the election referred to was prior to its adoption. Had the bonds contained recitals showing the indebtedness was not affected by the limitations of the constitution, such recitals could have conferred no power to assess taxes expressly prohibited by the constitution. Recitals in a bond do not confer power when none exists; they only cure defects in the execution of existing powers.

There can be no question, that to authorize county authorities to assess taxes in excess of 75 cents per $100 valuation, to pay indebtedness incurred after the adoption of the constitution of 1870, the vote of the people must be taken in pursuance of that instrument. In this case we have shown as we think, that if a debt was created at all, it was by the issue of the bonds. In order to get the authority to assess taxes exceeding the amount limited by the constitution, the question should have been submitted to the people that they might determine by their votes whether they would consent to the assessment of such taxes. That section of the constitution does not touch existing indebtedness Its limitation relates solely to indebtedness to be thereafter incurred, and clearly contemplates that the authority to assess taxes exceeding the specified

amount, shall be given, if at all, by a vote thereafter taken. The limitation upon the power of county authorities, to assess taxes, applies to debts to be contracted in the future, and the vote to enlarge the power must be given in the future. The limitation and the mode of enlarging it, both have a prospective operation. This view is strengthened by reference to other clauses of the constitution curtailing the power of municipal corporations to incur debts. Section 12 of Article 9 prohibits all municipal corporations from becoming indebted in any manner or for any purpose to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. It is provided however that "This section shall not be construed to prevent any county, city, township, school district or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor." The separate section prohibiting municipal subscriptions to railroads or private corporations, has this proviso: "That the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of

such municipality prior to such adoption." It will be observed that in each of these sections, limiting the power of municipalities to incur debts, there is a very clear and distinct saving clause, when the same have been authorized, under existing laws, by a vote of the people prior to the adoption of the constitution. There is no such saving clause in the 8th section of the 9th article of the constitution. Unless the indebtedness was in existence at the time of the adoption of the constitution, though the people may have voted repeatedly and unanimously, to create such indebtedness, the county authorities are prohibited from levying taxes to pay it, unless authorized by a vote of the people of the county. In this case, however, there was no vote of the people, either before or after the adoption of the constitution, authorizing the county authorities to levy taxes to meet the proposed indebtedness, in excess of the amount fixed by that instrument.

It may be pertinent to make inquiry as to the effect upon this donation, of the separate clause of the constitution, entitled "Municipal subscriptions to railroads or private corporations." That section prohibits the making of subscriptions, donations, etc., by municipalities, to railroads or private corporations, with a proviso "That the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions when the same have been authorized, under existing

laws, by a vote of the people of such municipality prior to such adoption." This section simply implies, that if the power exists in the municipality to make a subscription or donation, under the authority of laws then in force and a vote of the people in pursuance thereof, in aid of a railroad or private corporation, that this section shall not take it away. The section gives no additional power. It takes none away that is within the saving clause. It removes no barriers interposed in other parts of the instrument to protect the people from excessive taxation. It is not to be "construed as affecting the right of any such municipality," in that behalf. So far as concerns the right of the county to make donations, voted for under existing laws prior to the adoption of the constitution, the prohibition is neutralized by the saving clause. Having examined and commented upon all the provisions of the constitution and the laws that seem to have a bearing upon the validity and effect to be given to this series of bonds, we deduce the following proposition, namely: On the 27th of May, 1872, there having been a vote of the people prior to the adoption of the constitution, authorizing a donation of $200,000 by the county to the Bloomington and Ohio River railroad company, to be paid upon the building and equipment of the road through the county, and the running of the cars thereon; said conditions not having been performed when the constitution was adopted, and no vote of the people

authorizing an assessment of taxes to pay the same having ever been taken ; the authorities of Moultrie county, under an enabling act, not mandatory, gave, without any consideration in law, there being no power to coerce them, to the Bloomington and Ohio river railroad company, upon performance of the conditions upon which the donation was to be made after the adoption of the constitution, two hundred thousand dollars in Moultrie county bonds, drawing interest at ten per cent per annum. If the foregoing proposition can be construed, as defining an indebtedness of the county, existing on the 8th of August, 1870, when the constitution became operative, the limitation upon the aggregate amount of taxes to be assessed by the county authorities to 75 cents per $100, does not affect that indebtedness. If that proposition does not define a contract then existing the limitation on the taxing power controls it.

When the power of a municipal corporation to assess taxes, is limited to a sum, insufficient to pay the bonds or other evidences of indebtedness of such municipality, in what manner and to what extent will such evidences of indebtedness be affected by the absence of power to procure the means of payment? We prefer to answer this question in the language of the court: "Every purchaser of a municipal bond is chargeable with notice of the statute under which the bond was issued. If the statute gives no power to make the bond, either by express grant or by

implication, to raise money by taxation to pay the bond, the holder cannot require the municipal authorities to levy a tax for that purpose. If the purchaser in this case had examined the statutes under which the county was acting, he would have seen what might prove to be difficulties in the way of payment. As it is, he holds the obligation of a debtor who is unable to provide the means of payment. We have no power by mandamus, to compel a municipal corporation to levy a tax, which the law does not authorize. We cannot create new rights or confer new powers. All we can do is to bring existing powers into operation. In this case it appears that the special tax of one twentieth of one per cent has been regularly levied, collected and applied, and no complaint is made as to the levy of one-half of one per cent for general purposes. What is wanted is the levy beyond these amounts, and that we think under existing laws we have no power to order." United States vs. Macon county, 99 U. S., 582. Again: "It follows that in this class of cases, the right to contract must be limited by the right to tax, and if in the given case, no tax can lawfully be levied to pay the debt, the contract itself is void for want of authority to make it. If this were not so, these corporations could make valid promises, which they have no means of fulfilling, and on which, even the legislature that created them can confer no such power. The validity of a contract which can only be fulfilled by a

resort to taxation, depends on the power to levy the tax for that purpose." Loan Association vs. Topeka, 20 Wall, 655. We also refer to supervisors vs. United States, 18 Wallace, 71; Butz vs. City of Muscatine, 8 Wallace, 575; United States vs. county of Clark, 95 U. S., 769; United States vs. county of Clark, 96 U. S., 211. If we apply the rule in this case that "the right to contract must be limited by the right to tax," these bonds are absolutely void. If a special tax was authorized to be assessed to pay the bonds, insufficient in amount, the plaintiff would be entitled to judgment, and a levy of the special tax, as in case of United States vs Macon county, and other cases cited; but when, as in this case, no special tax is authorized, and the amount limited by the constitution will not defray the ordinary expenses of the county and pay the indebtedness, the case would seem to be within the rule laid down by the court in Loan Association vs. Topeka. The court found specially that to enable the county to pay this debt and other indebtedness prior to this, but as we claim since the adoption of the constitution, "will require the annual assessment of taxes, which will exceed 75 cents per $100 valuation of the taxable property in said county of Moultrie." See record page 68 and 69. The court also found that "no proposition to levy a tax to pay the principal or interest upon the sum to de donated as aforesaid was submitted to the voters of said county. Record page 28.

There being no means except taxation, to raise the money to pay this indebtness, and no power in the county authorities to assess taxes to pay the same, the bonds if not null and void, must be utterly valuless. But whether the want of power to assess the taxes defeats the recovery of a judgment, or only obstructs the remedy by mandamus; the court below having decided that the bonds in question are not subject to the limitation in the constitution upon the amount of taxes to be assessed; the point is respectfully submitted to this court to reverse the judgment if the bonds are void; and if valid, but subject to the constitutional limitation, that the ruling of the court upon that point be corrected, in order that the litigation upon the bonds in question may end here. This court in one case held that "In the present case, the indebtedness of the city of New Orleans is conclusively established by the judgments recovered. The validity of the bonds upon which they were rendered is not now open to question. Nor is the payment of the judgment restricted to any species of property or revenues, or subject to any conditions. The indebtedness is absolute. If there were any question originally as to a liimitation of the means by which the bonds were to be paid, it is cut off from the consideration now by the judgments. If a limitation existed, it should have been insisted upon when the suits on the bonds were pending, and continued in the judgments. The fact that none is

continued is conclusive on this application that none existed." United States vs. New Orleans, 98 U. S., 381. On the authority of this case, we have no doubt but all the questions pertaining to the remedy to enforce the collection of these bonds, as well as to their validity, can be determined in this proceeding.

Since passing the point in the argument relative to the effect upon the bonds in question, of the limitation in the constitution of 1870, upon the taxing power, an authority, pertinent to the case, has fallen under our notice to which we wish to refer: The case is Buffalo, etc. R. R. Co. vs. Falconer, heard at the October term, A. D. 1880, of the supreme court of the United States. From the opinion of the court, delivered by Mr. Justice Bradley, we quote extracts showing that the rule of law insisted upon by the plaintiff in error in the case at bar, was recognized by this court in the case to which we refer: "the petition of the taxpayers of the town of Ellicott, was voted March 25, 1872, and expressed their desire in the following terms: "Your petitioners desire that the said town of Ellicott shall create and issue its bonds to the amount of $200,000, and invest the same or the proceeds thereof in the stock of the Buffalo & Jamestown railroad company, upon the conditions that the line of the railroad of said company to be constructed from the city of Buffalo to the line of the state of Pennsylvania, in said county, shall be located and constructed,

through the village of Jamestown in said town of Ellicott, before said bonds shall be delivered to said company or sold. * * * All that was done by the town through the action of its tax payers and the county judge, was to appoint agents for making a subscription and issuing bonds on the happening of a certain event. * * * This was the condition of things on the 1st of January, 1875, when the new constitution went into operation, prohibiting all municipal aid to corporations or individuals by subscription of stock or otherwise. It seems to us therefore, that the New York court of Appeals was right in deciding that no contract existed at that time. After the amendment took effect, no county, city, town or village could subscribe for railroad stock; and of course, no agent or attorney of any such corporation could do so. What had not been done before in this regard, could not be done afterwards, unless some valid contract required it to be done, etc." The Central Law Journal, vol. 13, commencing on p. 229.

We have already considered several questions touching the validity of the bonds issued to the Decatur, Sullivan and Mattoon railroad company. We omitted the discussion of the effect of the limitation contained in the constitution on the power to assess taxes, upon this series of bonds; as this could be done more conveniently in connection with the consideration of the same question touching the other series of bonds. The vote in favor of donat-

ing the $75,000 to the Decatur, Sullivan and Mattoon railroad company, was upon substantially the same conditions, as the donation to the Bloomington and Ohio River railroad company. See record page 49 and 50. The conditions upon which the donation was to be made were performed after the adoption of the constitution of 1870, and the bonds were issued after the performance of the conditions. See Record page 29. The authorities already referred to, and the arguments used thereon, apply to this issue of bonds with the same force as to the other issue; and we deem it unnecessary to repeat the same here. For the reasons stated and upon the authorities cited, we insist, that there was no grant of power to Moultrie county to make a donation to the Decatur, Sullivan and Mattoon railroad company. That there was no vote of the people prior to the adoption of the constitution under existing laws authorizing such donation and that that series of bonds are null and void.

That all the bonds in question in this suit are subject to the limitation in the constitution upon the power to assess taxes, and the amount of the assessment within the constitutional limit being insufficient to pay the indebtedness, the bonds for that reason are null and void; or if valid no assessment of taxes in excess of the amount limited by the constitution can be made to pay the judgment and the ruling of the court below to the contrary should be reversed.

JOHN R. EDEN,
Attorney for Plaintiff in Error.

through the village of Jamestown in said town of Ellicott, before said bonds shall be delivered to said company or sold. * * * All that was done by the town through the action of its tax payers and the county judge, was to appoint agents for making a subscription and issuing bonds on the happening of a certain event. * * * This was the condition of things on the 1st of January, 1875, when the new constitution went into operation, prohibiting all municipal aid to corporations or individuals by subscription of stock or otherwise. It seems to us therefore, that the New York court of Appeals was right in deciding that no contract existed at that time. After the amendment took effect, no county, city, town or village could subscribe for railroad stock; and of course, no agent or attorney of any such corporation could do so. What had not been done before in this regard, could not be done afterwards, unless some valid contract required it to be done, etc." The Central Law Journal, vol. 13, commencing on p. 229.

We have already considered several questions touching the validity of the bonds issued to the Decatur, Sullivan and Mattoon railroad company. We omitted the discussion of the effect of the limitation contained in the constitution on the power to assess taxes, upon this series of bonds: as this could be done more conveniently in connection with the consideration of the same question touching the other series of bonds. The vote in favor of donat-

ing the $75,000 to the Decatur, Sullivan and Mattoon railroad company, was upon substantially the same conditions, as the donation to the Bloomington and Ohio River railroad company. See record page 49 and 50. The conditions upon which the donation was to be made were performed after the adoption of the constitution of 1870, and the bonds were issued after the performance of the conditions. See Record page 29. The authorities already referred to, and the arguments used thereon, apply to this issue of bonds with the same force as to the other issue; and we deem it unnecessary to repeat the same here. For the reasons stated and upon the authorities cited, we insist, that there was no grant of power to Moultrie county to make a donation to the Decatur, Sullivan and Mattoon railroad company. That there was no vote of the people prior to the adoption of the constitution under existing laws authorizing such donation and that that series of bonds are null and void.

That all the bonds in question in this suit are subject to the limitation in the constitution upon the power to assess taxes, and the amount of the assessment within the constitutional limit being insufficient to pay the indebtedness, the bonds for that reason are null and void; or if valid no assessment of taxes in excess of the amount limited by the constitution can be made to pay the judgment and the ruling of the court below to the contrary should be reversed.

JOHN R. EDEN,
Attorney for Plaintiff in Error.

IN THE SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1881.

THE COUNTY OF MOULTRIE, Plaintiff in Error,
vs.
GEORGE B. FAIRFIELD, Defendant in Error.

} ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

Reply to the Argument and Brief of Messrs. Bailey & Sedgwick of Counsel for the Defendant in Error.

JOHN R. EDEN,
ATTORNEY FOR PLAINTIFF IN ERROR.

IN THE SUPREME COURT

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Reply to the Argument and Brief of Messrs. Bailey & Sedgwick of Counsel for the Defendant in Error.

The argument and brief of defendant in error, in answer to the first point made by plaintiff in error, says: "The reasons urged in support of this view are not clear, but seem to be, first, that if section 9 applies to Moultrie

county the limitation of eighty thousand dollars imposed in section 10 is taken away, and second, that the proviso of section 10 that the bonds therein authorized shall not issue until the road is open for traffic between Decatur and Sullivan, is annulled." We will endeavor to make the point clear. Under authority of section 9, counties along or near the route of said road, or that are in anyway interested therein, may in their corporate capacities, subscribe to the stock of said company or make donations thereto "when authorized by a vote of the people. A county described by section 9, if that section stood alone, might when authorized by a vote of the people, either subscribe to the capital stock of said company or make donation thereto, in whatever amount the vote of the people prescribed, and upon such terms and conditions as the vote pointed out. Of what use then is section 10. The county of Moultrie comes within the description of section 9; but section 10 authorizes that county to make a subscription and limits the amount and prescribes other conditions upon which its bonds shall be issued in payment of the subscription. Section 10 does not authorize a donation. If the legislative authority had stopped at section 9, Moultrie county could have made a subscription or a donation to this railroad company, upon an affirmative vote of the people therefor. But section 10 comes in and limits the amount to be subscribed by the county, and says nothing

about a donation. How this limitation upon the power of the county is to be extended, or why, by implication the authority to make an unlimited donation, as well as a limited subscription, is to be drawn from it, does not very clearly appear.

Defendant in error claims that sections 9 and 10 refer to different subjects matter— section 9 to subscriptions or donations to be made under authority of a vote of the people, and section 10 to a subscription without a vote of the people. True, section 9, as a condition to a subscription or a donation requires an affirmative vote of the people, whilst section 10 says nothing about a vote of the people. Both sections however treat of the same subject. That is how aid shall be given by municipal corporations to this railroad company. Section 9 gives the power and prescribes the mode, under which all interested municipalities may extend aid; whilst section 10 limits the power and prescribes the mode by which a single municipality may extend aid in the premises. Without the limitation prescribed in section 10, Moultrie county could have made either a subscription or a donation to the railroad company. With the limitation imposed upon the county by section 10, defendant in error comes to the strange conclusion that the county has authority to make both a subscription and a donation to the railroad company. This much by way of making the reasons clear on the first point made by plain-

tiff in error. If the position taken be correct, that the law conferred no power on Moultrie county to make the donation, no recital in the bond could make it valid; hence no answer need be made to defendant's argument on that point.

Defendant in error seems to be mistaken in another point, in which we will simply make the correction and add nothing to the argument adduced in the former brief and argument made in the cause. We make no point on a mis description of the name of the road, in the petition and notices of election. We attempted to show that the petition and notices and the vote taken thereon was in aid of the Mattoon & Decatur road; a corporation duly authorized to construct a road, and still in force; and that the board of supervisors could not under that vote, make a donation to the Decatur, Sullivan & Mattoon railroad company and issue the bonds of the county therefor.

The argument, and brief of defendant in error, again invokes the recitals in the bonds, as an answer to our position taken in our former brief and argument, that the bonds and coupons in question in this suit, are subject to the limitation contained in section 8 of article 9, of the constitution of 1870. Defendant says "he is not bound to know the assessed valuation of the county, or how much it would take to run it ordinarily. Much less is he bound to know the assessed valuation of the county, next year, or

ten years hence, or at these bonds, etc." This all may be very true; yet he was bound to know, that for an indebtedness created after the adoption of the constitution, and the date of his bonds should have put him on inquiry, the authorities of the county could never assess taxes exceeding in the aggregate 75 cents per $100 valuation, unless authorized by a vote of the people of the county. Nor was defendant in the least misled upon this point by the recitals in his bonds. Those recitals showed him that the bonds were issued in pursuance of a vote held on the 2nd day of Nov. 1869, prior to the adoption of the constitution, and in accordance with the provisions of the charters of the companies respectively, and not under the provisions of the 8th sec. of the 9th article of the constitution of 1870. It was manifest to the defendant in error, from the face of the bonds, when he purchased them, that there had been no vote under the present constitution authorizing the assessment of taxes for their payment. Defendant further claims that the supreme court of the state has held that such a vote of the people, even before the bonds were issued, would constitute an "indebtedness" under the provisions of the constitution, and in support of this position cites Chinquy vs. People, 78 Ills., 570. If this be true, it puts that court in antagonism to a long line of its decisions, some of which are referred to in our former brief in this case. But does the authority quoted sustain the position of defendant

in error? The question decided by the supreme court of the state, arose upon an objection made in the county court, to prevent the recovery of a judgment ordering the sale of delinquent lands. The court says, "It is urged, that there was levied a tax to pay the interest on $100,000 of county bonds, issued for railroad purposes, which increases the county levy to a larger per cent than is authorized by our constitution. The vote in favor of issuing the bonds was taken in 1869, and before the adoption of the constitution, and hence is not within its prohibitions. The 8th section of article 9 prohibits any county from levying a tax exceeding seventy-five cents on the $100 valuation, except for indebtedness existing at the adoption of the constitution, unless authorized by a vote of the people of the county. When this vote was had, so far as this record discloses, it became a debt of the county, and a *mandamus* would have compelled the county to issue bonds as evidence of that indebtedness, etc." "When this vote was had, so far as the record discloses," says the court, "it became a debt of the county, and *mandamus* would have compelled the county to issue bonds, etc." In the case at bar it clearly appears, that when the vote was had, mandamus would not have compelled the county to issue the bonds, for the reason that the making of the donation and the issuing of the bonds, depended wholly on the performance of the conditions by the railroad companies, upon which

the donations were to be made. When the limitation upon the amount of tax to be assessed by county authorities became operative, mandamus would not have compelled the county to issue the bonds, by reason of the non performance of the conditions. So far as regards the donation to the Bloomington & Chio River railroad company, the county could under no circumstances have been compelled by mandamus to issue the bonds; for the reason that section 19 of the charter, simply *empowers* the county to make the donation. It will thus be seen that the record in this case discloses very material facts, not shown in the case of Chinquy vs. People. The case of the people ex. rel. vs Cass county, 77 Illinois, 438, referred to in our former brief, gives the true position of the supreme court of the state, upon the point at issue. The court says: "A county, except when so specially authorized by statute, cannot contract through the electors alone, either by the assistance of the ballot box, or otherwise." In the light of the facts disclosed by this record, can it be seriously contended that the vote of the people, without any attempt to perform the conditions prescribed by the vote, created an indebtedness by the county to these railroad corporations? We may safely say, no court, state or federal, has ever decided, that a vote of the people to make a donation, without some act on the part of the donee, creates an indebtedness against a municipal corporation. We concur in the opinion of the

supreme court in Chinquy vs. the people, that if, at the time of, or prior to the adoption of the constitution of 1870, mandamus would have compelled the county of Moultrie to issue the bonds in controversy, the limitation upon the amount of taxes to be assessed, contained in that instrument does not apply in this case. If the vote of the people in favor of the donations, had been unconditional, and the law had been imperative, that when the affirmative vote was had, the county authorities should at once make the donations, the railroad companies could not have the benefit of the remedy, by mandamus, without in some way, first manifesting an intention to accept the bounty of the county. The gift could not be forced upon them without their consent; and if they delayed action until after the power of the county to assess the necessary taxes to pay the proffered indebtedness had been abolished by legislative or constitutional enactment; they could thereafter, accept the donations, only under the terms of the new enactment. In support of this position we refer to Aspiwall vs. com's. of the county of Daviess, 22 Howard, 364. Wm. B. Wadsworth vs the board of supervisors Eau Clair county, decided at the October term, 1880, of this court, and the Buffalo, etc., railroad company vs. Falconer, decided at the same term. As defendant's counsel again makes the erronerous statement, that upon the affirmative vote of the people, the law required the municipal author-

ities to make the donations, we will again refer to the 19th section of the act authorizing donations to be made to the Bloomington & Ohio river railroad company, simply empowers the municipalities to make donations.

It is claimed that the vote of the people in favor of these donations, by necessary implication authorizes a tax to pay the principal and interest as it becomes due. This position would be correct, if the debt had been created before the limitation upon the amount of taxes to be assessed, had been imposed. But there can be no implication in favor of a tax forbidden by the fundamental law. It is further insisted that the fact of the issue of the bonds under the law is conclusive upon the county that the conditions had been complied with before the bonds were issue—that the donations had been made in apt time and that the bonds of the county were payable principal and interest at maturity. We see no reason why these extraordinary presumptions should be considered conclusive against the county. There is nothing on the face of the bonds certifying that the conditions had been performed by the companies prior to the adoption of the constitution; nor any intimation that a vote had been had under that instrument authorizing the assessment of additional taxes to pay the proposed indebtedness. The officers of the county could not determine, and hence were not required to ascertain, the amount of taxes that could be realized in the future

under the limitations of the constitution. All the parties to the transaction were bound to know what the limitation was. Their inability to look into the future, and see the amount of taxes to be realized under the limitations of the constitution, does not render the provisions of that instrument inoperative. It is further urged by defendant in error that "When a corporation has power under any circumstances to issue negotiable securities, the *bona fide* holder thereof has a right to presume that they were issued under the circumstances which gave the requisite authority, etc." Upon this point we will refer to Illinois authority, which defendant in error seems to hold good in this case. These bonds were issued long after the adoption of the constitution of 1870. In such case the supreme court of the state has repeatedly and uniformly held, that the burden of showing the bonds were issued in compliance with a vote of the people of the municipality, had, prior to the adoption of the constitution of 1870, in pursuance of some law then providing therefor, rests upon those affirming their validity. In one case the court says the bonds are *prima facie* invalid. Supervisors of Jackson county vs. Brush et. al., 72 Ills., 59. The people ex. rel. vs. Jackson county, 92 Ills., 441. Counsel for defendant in error assume, because the officers of the county, were empowered by law, in force before the adoption of the constitution to issue the bonds; and upon the performance of the conditions upon which

the donations were to be made after such adoption, that they did issue them, it will be conclusively presumed in favor of innocent holders as against the county; that the officers had the power to pledge the taxable property of the county to its full limit to the payment of these coupons and these bonds; notwithstanding the county authorities are expressly forbidden by the constitution to assess taxes beyond a certain limit for indebtedness then incurred. The claim is also made, that the same conclusive presumption exists against the county, that everything had been done by the county and the county authorities and the people of the county necessary to give these officers power to pledge the county as nominated in the bond; that if a vote of the people specially to tax the county to that extent under the law were necessary, it had been taken, etc. No authority is quoted to sustain these extraordinary propositions, but the opinion is expressed that they are borne out by the decisions of this court. In addition to the numerous decisions of this court cited to the contrary in plaintiff's former brief, we refer to a decision of the supreme court of Illinois. That court says: "It is apprehended the obligations assumed under existing laws cannot, since the adoption of the constitution, be enlarged or materially changed, either by the action of the people of the township or its corporate authorities." Middleport vs. Etna Life Insurance Co., 82 Ills., 582. If the proposition of

the defendant in error be true, all that is necessary in order to change the obligations of Moultrie county as assumed under existing laws at the time of the adoption of the constitution, is an acceptance thereafter, by a railroad company of a donation tendered by the county prior to such adoption, and the performance of the conditions on which the donations was to be made, and the issue of the bonds of the county after such performance; and thereupon, by the act of the county authorities in issuing such bonds, it shall be conclusively presumed as against the county in favor of an innocent holder, that the donation was accepted and the conditions performed by the railroad company, before the constitution was adopted; and if necessary that a special tax was voted by the people to pay the debt. This would be a change of the liabilities of the county, after the adoption of the constitution, by the act of its officers, that would result in the nullification of one of its provisions.

In conclusion, we reaffirm the position taken in plaintiff's original brief: That the charter of the Decatur, Sullivan and Mattoon railroad company did not authorize a donation by Moultrie county to that company; and that the supposed indebtedness of the county in payment of which the bonds in question in this suit, were issued was created, if at all, after the adoption of the constitution of 1870; and is subject to the limitation contained in the 8th

section of the 9th article thereof, upon the amount of taxes to be assessed by county authorities:

The limitation upon the taxing power does not apply to municipalities other than counties; hence authorities that may be referred to, showing that upon a vote by a city or township to create a debt in aid of a railroad, authority to assess taxes in payment thereof is implied, will not be in point. There can be no implied authority to do what the constitution prohibits.

JOHN R. EDEN,
Attorney for Plaintiff in Error.

No..... *Agenda No*.....

IN THE

SUPREME COURT

OF THE UNITED STATES.

October Term, 1881.

THE COUNTY OF MOULTRIE,
Plaintiff in Error,
vs.
GEORGE B. FAIRFIELD,
Defendant in Error.

Error to the United States Circuit Court for the Southern District of Illinois.

ARGUMENT AND BRIEF OF BAILEY & SEDGWICK,
OF COUNSEL FOR DEFENDANT IN ERROR.

NO. 1187.

IN THE

SUPREME COURT

OF THE UNITED STATES.

October Term, 1881.

THE COUNTY OF MOULTRIE,
Plaintiff in Error,
vs.
GEORGE B. FAIRFIELD,
Defendant in Error.

Error to the United States Circuit Court for the Southern District of Illinois.

ARGUMENT AND BRIEF OF BAILEY & SEDGWICK,
OF COUNSEL FOR DEFENDANT IN ERROR.

I.

The first point made by plaintiff in error is that under the authority of the act of the General Assembly of the State of Illinois, entitled "An Act to incorporate the Decatur, Sullivan & Mattoon railroad company," in force March 26, 1869, the county of Moultrie could only subscribe to the capital stock of said company, and such subscription could only be made under, and is limited by, section 10 of said act; that inasmuch as said section grants express authority to the board of supervisors of said county to subscribe not exceeding eighty thousand dollars to said railroad, and issue bonds therefor independent of any vote of the people of said county; therefore, section 9 of said act, which authorizes the several counties along or near said road, or in any way

interested therein, to subscribe or make donations to said road upon petition and vote of the people, has no application to Moultrie county. The reasons urged in support of this view are not clear, but seem to be, first, that if section 9 applies to Moultrie county the limitation of eighty thousand dollars imposed in section 10 is taken away, and second, that the proviso of section 10 that the bonds therein authorized shall not issue until the road is opened for traffic between Decatur and Sullivan, is also annulled. But, according to our view the limitation and proviso in section 10 are imposed only on the bonds authorized in that section, viz: bonds issued by the board of supervisors of Moultrie county *without a vote of her people*. That this section authorizes such bonds is clear. That such bonds may be authorized by the legislature is held in Keithsburg v. Frick, 34 Ill., 405.

Section 10 authorizes subscription without a popular vote to the extent of $80,000, and issuing bonds therefor, without a popular vote, when the road is opened between Decatur and Sullivan. While section 9 authorizes donation as well as subscription when petitioned and voted for by the people of the county to an unlimited amount. The sections, therefore, refer to different subjects matter, and there is no reason why both should not apply to Moultrie county. Of course, under section 9 the people would have the right to prescribe the conditions upon which the bonds, subscriptions or donations should be made, as provided in the act to fund and provide for paying this class of bonds, in force April 16th, 1869. See Public Laws of Illinois, 1869, pp. 319, 320.

Under section 9 the people would also set the limit to the amount, So that each section, 9 and 10, is com-

plete in its own scope and sphere, neither one interferes with the other, both apply to Moultrie county, one expressly and the other by description, and there is no rule for the construction of statutes which interferes with this application. To illustrate the different scopes of the sections, it appears in this case that the bonds issued under section 9 were donation bonds, while those issued under section 10 were subscription bonds. There was good reason why the legislature should empower the county authorities to issue a subscription bond without a vote of the people, and also a donation bond if the people approved by their vote. In one class of cases—subscriptions—it was naturally supposed the county would get some value received in the railroad stock as well as in the general benefits of railroad transportation, while for a donation it could only get the latter benefit. It was supposed that the stock would be worth something; it had a market value, and the county authorities might be permitted to subscribe for it on the limitation and condition mentioned in section 10, without first consulting the people, while if donations were made also they should be first approved by the people and upon such limitations and conditions as the people had the right to impose. We see no reason, then, to interfere with the clearly expressed intent of the legislature that both these sections should apply to Moultrie county. And as the bonds issued under said section 9 to the Decatur, Sullivan & Mattoon railroad were issued by the proper authorities of Moultrie county, and expressly recite upon their face that they were issued "by virtue of a vote of a majority of the legal voters of said county, voting at an election held in said county of Moultrie, on the 2d day of November, A: D. 1869, which election was authorized by and conditioned [conducted] ac-

cording to the provisions of an act of the general assembly of the State of Illinois, approved March 26th, 1869, entitled 'An Act to incorporate the Decatur, Sullivan & Mattoon railroad company,'" the county of Moultrie is now estopped to set up as against the defendants in error, *bona fide* purchasers of the bonds, that there had been no vote of the people of said county authorizing the same under existing laws prior to the adoption of the constitution of Illinois of 1870.

The purchaser of municipal bonds is not bound to look beyond the act of the legislature under which they were issued and the recitals on the face of the bonds.

Aspinwall v. The County of Knox, 21st How., 539.

Commissioners v. Bolles, 94 U. S., 104.

Twp. of Empire v. Darlington, 101 U. S., 87

Town of Colona v. Eaves, 92 U. S., 484.

Marcy v. Twp. of Oswego, 92 U. S , 6 8.

Bonham v. Needles, 103 U. S., 648.

Harter v. Kernochan, Ib. p. 570 of opinion.

This proposition is too well settled in this court to be shaken, and it relieves us from the labor of showing that the vote of the people of Moultrie county in the present case, as well as the petition therefor to donate $75,000 of the bonds of said county to the Mattoon, Sullivan & Decatur railroad was intended by the voters and petitioners for, and really was, a vote to donate that amount to the Decatur, Sullivan & Mattoon railroad company. That such was the fact is apparent from the action of the board of supervisors of said county thereon, December 16th, 1869, and thereafter till the bonds were issued November 1st, 1871. Under the decisions of the supreme court of the State

of Illinois the board of supervisors had a right to treat the error in the description of the railroad as immaterial. Where the name of a corporation consists of several words the transposition or omission of some of them is no mis cmer where it is evident what corporation is intended.

Chadsey v. McCreery, 27 Ill., 253.

Board of Education v. Greenbaum, 39 Ill, 609.

The board of supervisors knew what railroad was intended in the petition and vote of the people. They declared such intention by their proceedings and on the face of their bonds themselves, and it is too late now to deny that fact in order to defeat the bonds in our hands.

Moultrie county, then, cannot in this case invoke the separate section of the constitution of Illinois of 1870 to defeat these bonds issued by it to the Decatur, Sullivan & Mattoon railroad company. It cannot deny that these bonds were authorized under existing laws by a vote of its people prior to the adoption of that section of the constitution. Its county authorities, upon whom the decision of that question was devolved by section 9 of the act to incorporate said railroad company and by all acts authorizing the issuing of bonds of said county to any railroad company, decided long before the adoption of the above constitutional section, that such vote had been taken. That decision they continued to act upon. They issued these bonds and made the recitals therein carrying the decision into effect. It is too late to question it, now that the bonds have got into the hands of innocent holders for value.

II.

The next point made by plaintiff in error, as a reason

for reversing or modifying the judgment below, is that the bonds issued to the Bloomington & Ohio River railroad company, as also the bonds issued to the Decatur, Sullivan & Mattoon railroad company, are subject to the limitation of the 8th section of article 9 of the constitution of Illinois of 1870, which provides: "County authorities shall never assess taxes, the aggregate of which shall exceed 75 cents per $100 valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county."

The constitution was adopted by the people at an election held on the first Saturday in July, 1870. On that day, as held both by this court and the supreme court of Illinois, the separate sections voted for with the constitution became the supreme law of the state on the subjects concerning which they speak. We have had occasion to notice one of those separate sections in the former branch of the argument. The section now under consideration is a part of the constitution itself, and became the supreme law of the state August 8th, 1870. See section 12 of the schedule submitting the constitution. The point made by plaintiff in error is that these bonds represent no indebtedness existing prior to August 8th, 1870; that hence the county authorities of Moultrie county can never, in any one year, assess taxes for the purpose of paying these bonds or interest thereon, the aggregate of which, with the current necessary expenses of the county, exceeds 75 cents per $100 of the valuation of the taxable property for that year, unless authorized by a vote of the people of the county. This is what the plaintiff in error must mean by its position as examined in the light of the facts in this case, and the constitutional provision invoked. If this

constitutional provision applies to these bonds at all, it does not render them void, because it does not say that no taxes shall ever be assessed to pay them, as in the cases cited by plaintiff in error. It only says that in no one year shall any installment be paid on them or their interest large enough to render necessary a tax of over 75 cents on the $100 valuation, unless authorized by a vote of the people of the county. Of course this cannot affect the validity of the bonds. If it did the recitals on the face of both issues of bonds would make short work of it as against us. The purchaser of the bonds, though bound to know the law under which they were issued, is not bound to know the assessed valuation of the county, or how much it would take to run it ordinarily. Marcy v. Township of Oswego, 92 U. S. 637. Humbolt Twp. v. Long, 26 Ib, 642. Much less is he bound to know the assessed valuation of the county next year or ten years hence, or at the maturity of these bonds, or how much it will then necessarily take to run the county. We have already given the recitals on the Decatur, Sullivan & Mattoon railway bonds. Those on the Bloomington & Ohio River railroad bonds are equally as explicit, viz: "This bond is one of a series issued in aid of the construction of the Bloomington & Ohio River railroad, amounting to two hundred thousand dollars, and consisting of two hundred bonds numbered from one to two hundred inclusive, each of which is for one thousand dollars, and all of which are of like tenor and date, and are issued by said county of Moultrie by virtue of a vote of a majority of said county of Moultrie, voting at an election held in said county of Moultrie on the 2d day of November, A. D. 1869, which election was authorized by and was conducted according to the provisions of an act of the General Assembly of the state of

Illinois, approved March 10th, 1869, entitled "An Act to incorporate the Bloomington & Ohio River railroad company." The purchaser of either series of these bonds was entitled to rely upon the statements on their face that they had been issued pursuant to a vote of the people of Moultrie county prior to the adoption of the new constitution held under and in accordance with an existing law. Now the supreme court of the state of Illinois has held that such a vote of the people, even before the bonds were issued, would constitute an "indebtedness" under this provision of the constitution. Chinquy v. People, 78 Ill., 570. This was a construction of the section of the constitution under consideration upon which the purchaser of these bonds had a right to rely. And such construction has never been modified in the least by the supreme court of the State of Illinois. It stands as the rule of that court to-day. It not only sweeps away any proposition tending to invalidate the bonds by means of that section of the constitution. It goes further, and shows that such section has no application whatever to these bonds, because they were issued for an indebtedness incurred by the people of said county at the ballot box before the adoption of the present constitution. That indebtedness had also been consummated in the present case, if any further consummation was necessary, by the county authorities of Moultrie county, who, as to both classes of bonds, had made on their records, before the adoption of the constitution of 1870, the formal donations voted by the people. And as to the Decatur, Sullivan & Mattoon bonds, at least, the railroad company had formally accepted the donation by entering into contract with third parties to build the road on consideration, in part, of these bonds, before the adoption of the constitution of 1870. And under the holdings in Illinois the presumption is that the other railroad had acquired rights and credits with third parties on the faith and credit of this obligation of Moultrie county

before the new constitution went into effect. In Prettyman v. Supervisors of Tazewell Co., 19 Ill., 406, it was held that after a delay of four months it would be presumed that rights had been acquired and liabilities incurred on the faith of the bonds voted.

Whatever may be the holdings of other courts in other states on this question, we take it to be the settled law of Illinois that the voting of the bonds by the people under laws like those under which these bonds were voted, which make it obligatory upon the county authorities to issue the bonds when voted by the people, make the vote itself an obligation, a debt of the county. The acts to be performed by the county officers after the vote are ministerial, and may be enforced by mandamus. In both laws now under consideration the provision is that if the vote carries the corporate authorities SHALL subscribe or donate, as the case may be, according to the vote. The vote, then, is what fixes the liability of the county under the Illinois rulings.

Before the adoption of the constitution of 1870 the board of supervisors of Moultrie county, upon the terms and conditions as voted by the people, as appears by the records of their December term, 1869, and their March term, 1870, expressly donated the amounts voted to these railroads and ordered these bonds to issue to pay such donations when the terms and conditions of the votes were complied with. Also the Decatur, Sullivan & Mattoon railroad accepted its donation by entering into a contract April 15th, 1870, with third parties to build the road, in consideration, in part, of said donation to it. This brings the case within the doctrine of The County of Moultrie v. Savings Bank, 2 Otto, 631, holding that the action of the board on the subscription bonds to the D., S. & M. R. R. at its December term, 1869, amounted to a subscription, and a subscrip-

tion on the books of the railroad was unnecessary. So here the obligation was complete before August 8th, 1870, when the new constitution went into effect.

Again, it is true as found by the court below that there has been no vote of the people of Moultrie county authorizing in express terms a tax to pay the interest and principal of these bonds as the same mature. But does not the vote of the bonds itself by necessary implication authorize a tax to pay the interest and principal as it becomes due? It seems to us it does. The people had power when they voted these bonds to say expressly, "A tax shall be levied to pay the interest and principal thereof as the same matures."

United States v. New Orleans, 8 Otto, 381.

The 9th section of the act incorporating the Decatur, Sullivan & Mattoon railroad company says that when a donation is made under it to a railroad by popular vote the county "shall, by its proper authorities, annually thereafter levy and collect a sufficient tax on its assessed property to pay the interest on its bonds so issued as aforesaid."

Did not the people really and in effect say that, as to principal and interest of both classes of bonds, when they voted them? It will be presumed that they intended to pay them. They said they should be paid. The only way to pay them was by taxation. It seems to us that such taxation was by necessary implication voted when the bonds were voted; that such taxation is "authorized by the vote of the people of the county," and the requirement of the section of the constitution is satisfied already. If not, if a further vote of the people to that effect is necessary, they have still power to make it. They cannot escape these obligations by

saying that they have no power to perform them. They have such power under the constitution and laws as they now stand. We think the judgment of the court below is right; that it is a debt of the county which ought to be paid, this judgment on these valid legal obligations, and that there is nothing in the constitution or laws of the State of Illinois to prevent our having execution thereon by mandamus to the proper county authorities for the collection of the full amount thereof without delay.

That there is nothing in the authorities cited by the counsel for plaintiff in error to militate against this view will be apparent from a brief review thereof.

The People ex rel. v. Tazewell Co., 22 Ill., 147, and The People ex rel. v. The County Board of Cass Co., 77 Ill., 428, were both decided on a vote under the provisions of the general law of Illinois of November 5, 1849, relative to subscriptions to railroad companies, or a special charter adopting such provisions, which leaves it *discretionary* with the county or city authorities, after the vote of the people empowering them, to subscribe or not to the railroad company, as they see fit. That is not this case, where the express language of the charters is that they shall subscribe or donate as voted. Of course, where the subscription is discretionary, after power is granted by the vote, the subscription must be actually or substantially made by the corporate authorities in order to complete the obligation, but the donation is complete at the polls when the statute says that it *shall* be made upon the vote. The acts of the officers are merely formal and ministerial, to which they can be compelled by mandamus if neglected by them. The county can contract through the electors alone, when so authorized by statute, so as to bind it.

In this case the county authorities did make the formal donation in pursuance of the vote of the people before the adoption of the constitution of 1870. This at least fixed the indebtness of the county before that instrument went into effect.

The People ex rel. v. Dutcher, 56 Ill., 144, cited by plaintiff in error on this point, does not touch it at all. It simply holds that in making the vote for subscription the people may at the same time impose the conditions thereof which the officers should conform to.

In Lippincott v. Town of Pana, 92 Ill., 24, the court holds that the vote had before the constitution was not under the existing laws at all. Therefore it could not bind the county. It recognizes the rule that if there had been such law and vote, it alone would bind the county. In the case at bar the vote was had under existing laws before the constitution of 1870 went into effect, and this the county is estopped to deny as against us.

Thus far the decisions of the supreme court of Illinois. There is nothing in them to shake the rule held in that court that bonds like these issued upon a vote had under existing laws before the adoption of the constitution of 1870 are mere evidences of an indebtedness created by the vote itself. This rule we presented to this court in the case of Fairfield v. Gallatin county, 100 U. S., 48, as a reason why it should reverse its own decision in the case of Town of Concord v. Portsmouth Savings Bank, 92 U. S., 628. This court reversed the latter decision thereupon on the ground that the rule in Illinois differed therefrom. We are a little surprised under these circumstances now to see the Town of Concord case quoted by plaintiff in error as an authority in

this court as against us. We reply the Gallatin county case, *supra*, to such authority. We know that in several cases in this court, cited in plaintiff in error's brief, arising in other states, where the holdings construing their statutes and constitution upon this question are not as in Illinois, the court has held that where the vote was for a subscription, under laws simply *empowering* the county officers to act upon such vote, there is no binding obligation on the county until the subscription is actually or in effect made. We submit that such holdings cannot apply to cases arising under the section of the constitution of Illinois now under consideration as to the *donation* bonds now under consideration, issued upon votes under laws like the charters to these railroads, for the simple reason that the court of last resort in Illinois, in construing that very section of the constitution, has held that the "indebtedness" therein mentioned was created by the popular vote itself under acts similar in that respect to the charters of these railroads *requiring* the officers of the county to issue the bonds after they had been voted by the people. That "shall" means *shall* in such cases is very clear; for the supreme court of Illinois has held that even "may" means shall in statutes of this character often, especially where third persons have a claim *de jure* that the power should be exercised.

Schuyler v. Mercer Co., 4 Gilm, 20.

Gillinwater v. M. & A. R. R. Co., 13 Ill., 1.

As this question cannot affect the validity of these bonds in our hands, but only goes to our right to collect the interest and principal of them as it matures in full, regardless of the assessed valuation of taxable property in the county and regardless of the necessary

amount required for the current expenses of the county, and as we are in considerable doubt whether this question properly arises on this record, whether it must not be brought to this court on a mandamus to collect our judgment before the court will consider it, we have some hesitation about going into an extended analysis of the cases in this court cited in plaintiff in error's brief, where it was held that an actual subscription by the corporate authorities, after vote of the people empowering it, was necessary in order to make a municipal indebtedness. None of these cases arose upon the construction of a state statute or constitutional clause like the one now under consideration where the state court of last resort had made a construction contrary to that view, as in the present case. None of them arose upon a clause of a constitution or statute saving the right to assess taxes beyond the limited amount when "authorized by a vote of the people of the county," and where the bonds themselves had been voted prior to its adoption and had been issued and purchased by innocent holders on the strength of recitals on their faces that they had been duly authorized by a vote of the people of the county under existing laws prior to the adoption of the limiting section, as in the present case. None of them arose on donation bonds where the donation might properly be considered complete under the law upon which it was made when voted by the people, and especially when confirmed by the county authorities before the limiting constitutional clause went into effect. Actual manual subscription on the books of the railroad company is not necessary to make the obligation complete. County of Cass v. Gillette, 10 Otto, 585. Upon which vote and confirmation the railroad company, too, had acted before the constitutional clause went into effect. We think these distinctions, or either

one of them, show that the cases in this court cited by plaintiff in error, to the effect that a vote for subscription, simply empowering the county authorities to make it, does not become a debt of the county till the subscription is actually made, do not govern in this case where the law under which the vote was taken, and recited on the face of the bonds, makes it *obligatory* upon the county authorities thereupon to make the donation on the terms and conditions voted and issue the bonds when the conditions are complied with. The very fact that the bonds are issued under such a law is conclusive upon the county that the conditions had been complied with before the bonds were issued; that the donation or subscription had been made in apt time, and the bonds were payable by the county, both principal and interest, in full at maturity. The bonds certify upon their face that they were issued "by said county of Moultrie by virtue of a vote of a majority of the legal voters of said county." This amounts to a certificate that the terms and conditions of said vote had been complied with; else they would not have been issued by virtue of the vote. The buyer is entitled to conclude that all things necessary to complete the donation or subscription had been done in apt time, else the bonds never would have issued with this certificate on their face.

The finding of a fact as done by the officer whose duty it is to ascertain the fact before issuing the bonds, and the certifying of such fact on their face is sufficient to assure innocent holders of such fact.

Warren Co. v. Marcy, 7 Otto, 96.

Black v. Commissioners, 9 Otto, 686.

Inhabitants of Pompton v Cooper Union.

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The parties issuing these bonds were intrusted by law and by Moultrie county with ascertaining whether a subscription or donation had in fact been made before issuing the bonds as required by the laws under which they were issued. They have decided that they were made; that they were made in apt time while there was yet authority to make them. Innocent purchasers of the bonds have a right to hold the county to this decision.

When a corporation has power under any circumstances to issue negotiable securities, the *bona fide* holder thereof has a right to presume that they were issued under the circumstances which gave the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such holder than any other commercial paper.

Van Hustrup v. Madison City, 1 Wall., 297.

Meyer v. Muscatine, Ib., 391.

Gelpeck v. City of Dubuque, Ib., 303.

Rogers v. Burlington, 3 Wall., 654.

Supervisors v. Schenk, 5 Wall., 770.

Pendleton Co. v. Ames, 13 Wall., 297.

City of Lexington v. Butler, 14 Wall., 282.

In this case Moultrie county is seeking to impeach these bonds in our hands for an infirmity, viz: That principal and interest is not collectable in full as it matures, and therefore we cannot have unconditional judgment for the same. The county admits that under certain circumstances it would have had power to issue the bonds without such infirmity; that if the railroad company had in terms accepted the donation, instead of simply acting upon it, or a subscription had been made on its books before August 8, 1870, then thebonds would

have been liable to no such infirmity. We reply that they have issued the bonds; that under certain circumstances they would have had power to issue them without infirmity, and that now they cannot be heard to allege such infirmity. If the people of this county had not intended to pay these bonds and the annual interest thereon promptly and in full at maturity, they should have taken steps to prevent their officers from issuing them. In the language of the supreme court of Illinois on a similar question, concerning waiver of irregularities by delay, in the case of Johnson v. Stark county, 24 Ill., 90: "It would be manifestly against every principle of justice to permit the tax-payers and citizens of a county through their officers to procure money, labor or materials upon bonds of the county issued on an affirmative vote of the citizens at an election held in a case authorized by law to escape all liability because of some slight informality in conducting the election, which was, or at least might have been, readily known to every citizen of the county before the bonds were issued. Counties have no right to procure all the benefits of an act which they are authorized to perform, recognized and acted upon by them as legal, and then escape liability, any more than private individuals. *They must respond to their legal engagements to the same extent as individuals.*" The last sentence has the true ring. Individuals, if they give their commercial obligations, must pay in full at maturity if they have the effects. They cannot plead a disability occurring between the time of the promise and its maturity, if others have in good faith acquired rights in the performance of that promise.

Municipal bonds having been issued and got into circulation, all reasonable presumptions must be in-

dulged in favor of their regularity; that the officers did their duty in issuing them; that the bonds were regularly issued and are valid. And even if irregularity be shown it will not invalidate unless it goes to the power to issue.

Maxey v. Williamson Co., 72 Ill., 207.

The officers having had power to issue the bonds in this case, payable, principal and interest, on the days specified therein, and having so issued them, it will be conclusively presumed in favor of innocent holders as against the county that there was no irregularity in their issue; that the officers had power to pledge the taxable property of the county to its full limit to the payment of these coupons and these bonds on the days when they respectively matured; that everything had been done by the county and the county authorities and the people of the county necessary to give these officers power to pledge the county as nominated in the bond; that if a vote of the people specially to tax the county to that extent under the law were necessary, it had been taken; that if a subscription on the books of the railroad company by the county authorities were necessary, it had been made; that if an acceptance of the donation by the railroad company before July 8th, 1870, were necessary, it had been done. When these officers put the commercial obligations of the county upon the market they had power to certify and did certify by that act to every purchaser thereof that no act had been omitted by the county, the county authorities or its people, necessary to provide for their payment in full at maturity. We think that the decisions of this court fully bear us out in these propositions.

The faith and credit of the county is pledged to pay

the principal and interest of these bonds in full at maturity. This is one of the strongest recitals on the face of the bonds. The purchaser has the right to rely upon this recital.

The purchaser of municipal bonds is not bound to look beyond the act of the legislature and the recitals on the face of the bonds.

Commissioners v. Bolles, 4 Otto, 104—and other cases cited *supra* to same effect.

Having completed this argument by getting around to the point from which we started, we cease. The whole thing lies in this unquestionable principle. We have a right to take for granted, as indisputably true, everything asserted on the face of these bonds, and every fact which the officers issuing the bonds should have ascertained before sending them out as obligations of the county. We have the right, therefore, to assume:

First, That there was a vote of the people prior to the adoption of the Illinois constitution of 1870 under existing laws authorizing the donation of $75,000 in bonds to the Decatur, Sullivan & Mattoon railroad company, because the bonds say so and because the law speaks for itself.

Second, That all the bonds in question in this suit were authorized by votes of the people of Moultrie county before the adoption of the present constitution to be issued for the amounts and upon interest, payable at the times specified in the bonds and coupons, for the payment of which in full at the times specified said votes of the people pledged the faith and credit of the county to the full extent of its taxable property.

Third, That it is implied by the issue of the bonds that the subscription and donation of the county to these several railroads had been completed in apt time before the adoption of the new constitution of Illinois; or that, at least, the necessary tax to pay bonds and coupons as they matured, was authorized by a vote of the people of Moultrie county.

We contend further that if plaintiff in error were not estopped by the issue of the bonds and the recitals thereon to deny these propositions, if they could be inquired into, the legal effect of the facts found by the court below sustains every one of them under the rules of decision in the supreme court of Illinois on the laws and constitution of that state; that the donations of Moultrie county to these railroads became a county indebtedness on the terms and conditions voted before the adoption of the constitution of 1870 under the rulings of this court in cases arising in Illinois; that the voting of the bonds by the people gives authority to levy a tax to pay them in full as they or the interest on them matures, without any further vote; that the constitutional section invoked can have no effect, either to invalidate the bonds and coupons or delay their payment.

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